

No 9

William THE *Wake*
Bishop of Lincoln's
CHARGE,
TO THE
CLERGY of his DIOCESE,
IN HIS
TRIENNIAL VISITATION
Begun at *LEICESTER*,
JUNE the 1st. 1709.



L O N D O N :

Printed for RICHARD SARE, at *Gray's-Inn-Gate*,
in *Holborn*, MDCCX.

THE
Bishop of Lincoln's

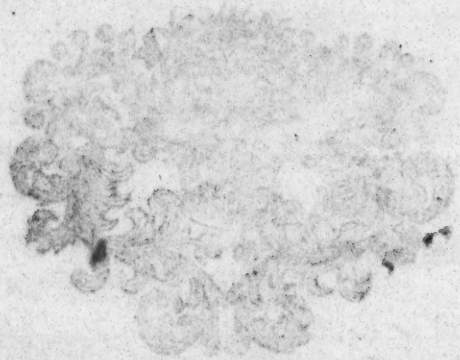
CHARGE

TO THE
CLERGY of his DIOCESE

IN HIS
TRINITY VISITATION
Begun at EASTER



June the 11. 1709.



L O N D O N :

Printed for RICHARD SARE, at Gray's Inn-Gate,
in Holborn, MDCCX.

TO THE
REVEREND the CLERGY
OF THE
DIOCESE of LINCOLN.

My Reverend BRETHRN,

WHEN I first drew up the following Discourse, I design'd it for the Subject of my Visitation-Charge; and to lay hold on the Opportunity of your coming together, upon that Occasion, to Recommend to you the serious Consideration of what I have chiefly handled in it. But after an Experiment made both at Leiceſter, and Lincoln, I found this Matter was of too large an Extent, and too weighty a Nature, to be either ſo fully ſpoken to by Me, or ſo duly conſider'd by You, as it ought to be, in the ſhort Time that could then be ſpared from our other Buſineſs. What therefore could not without great Inconvenience have been delivered to you then, I take this Method of conveying to you Now: And as by this means you will be the better Able to judge of the Importance of what is here Offer'd to You, with reſpect both to your Own Honour, and the Churches Welfare; ſo I hope you will be ſo juſt both to Your Selves, and It, as to give theſe things that ſerious, and impartial Conſideration, which it becomes you both as Chriſtians, and Clergy-Men, to do.

WE have of late been much alarm'd, upon every Occaſion, with loud Intimations, of the Churches Danger; and thoſe have been thought ſome of its beſt Friends, who have the moſt earneſtly call'd upon Us to conſider of it. Give me leave thus far to fall in with the Popular Cry, as to ſuggeſt to you a Matter

To the Reverend the Clergy

of Real Danger, if not to the Church it's self, yet I am sure to its Ministry; and to which, if some timely Stop be not put, I fear it will, in the End, prove fatal to Both.

IT cannot be doubted but that the Honour, and Safety, of the Establish'd Church, must greatly depend upon the Learning, Prudence, and Piety, of Those who are call'd to Officiate in the Ministry of it: And that, by consequence, the ready way to Subvert the One, must be to lessen and depreciate the Other. Could the Enemies of the Gospel carry the Point, they have been so much labouring of late, of laying aside the Ministry altogether; Could they perswade the World that no such Order of Men was either appointed by Christ, or is at all needful to the Church; They would soon compass the other part of their Design, to Overthrow all Revealed-Religion, as nothing else but mere Priest-craft: And accomplish the Glorious Work they seem chiefly to aim at, of pulling up our Enclosures; and leaving Mankind to their full Liberty of doing that, and that only, which every One should think Right in his Own Eyes.

BUT tho' this be a Design which they will never be able to accomplish by their Arguments; yet I know not how far their Policy, working upon the Corrupt Affections of Men, may in time effect what they desire; if some speedy Care be not taken to prevent it. To debase the Clergy in their Credit and Authority; to defraud them of their just Rights, and make their Maintenance not only Mean, but Precarious; being the ready way to render both their Labours Ineffectual; and their Function Contemptible; and, in the Consequence of Both, the Religion which they Preach, and the Church in which they Minister, Weak and Despised.

NOW this being the Case, it cannot but be very seasonable for Those whom it has pleased God to place as Overseers over his Flock, to call upon All such as wish well to our Common Christianity, to consider what These Persons aim at; and to what fatal Ends such Practices must naturally tend. To beseech, exhort, and conjure them to reflect how necessary it is to support the Dignity of the Clergy, as the best means to preserve the
very

of the Diocese of *Lincoln*.

very Light of the Gospel among us: And to persuade Them, if not after the Example of our Royal Sovereign, to Encrease, yet at least not to Do any thing that may Diminish their Rights; but to leave them freely to enjoy that small Residue of the Churches Patrimony, which the Iniquity of former Ages has not utterly deprived Them of.

TO convince Men of the Justice, as well as Reasonableness, of This, is the chief Design of the following Discourse: In which, having first enquired, as far as was necessary to my present purpose, into the Original of Lay-Patronage, and shewn what Interest it gives Those, who are intituled to it, in the Churches belonging to Them; I have endeavour'd, I hope pretty plainly, to shew, that they can derive no just Power from thence to lay any Burden, or Incumbrance, upon Those whom they Present to their Benefices; and that it must therefore be a grievous Abuse of the Trust committed to them, to endeavour to Impose any such unwarrantable Burdens, or Incumbrances, upon Them.

HOW far what I have here offer'd may be likely to satisfy Those who, without searching into the bottom of this Matter, have formed Other Notions to Themselves, more Suitable to their Own Tempers, or more Agreeable to their Own Interests, I cannot tell: But to Men of true Probity and Conscience, who regard not so much what is usually done, as what it becomes themselves to Do; I would willingly hope, that when they shall have duly considered the Case, as it is here truly stated to them, They may find enough to Convince Them, that They ought to Use their Right of Patronage after another manner, more profitable to the Church, and more suitable to those Ends for which they were intrusted with it: And even to incite them to take some proper Methods to oblige Others to do likewise. For however the Laws of the Church have done their Part to prevent all kinds of Abuses in this particular; and that excellent Statute of the 31st of Eliz: c. 6. has provided against some of the more notorious Cases in which this Right was liable to be Abused; yet it is but too evident, that a farther Restraint is still wanting both to Patrons and Clerks; to remedy those Evils which Our Church labours under

To the Reverend the Clergy

der, with Relation to this matter; and to restore it to that Freedom which by its Ancient Discipline it once enjoy'd, and which by the same Canons, still in force, however not easily to be put in Execution, it ought still to enjoy.

BUT tho' I thought it my Duty, when I was treating of this Subject, to begin with the Right of Patronage, in order to the better Conviction of Those who have the Disposal of our Parochial Churches in their hands; and should dispose of them according to the Measures prescribed, and the Confidence Reposed in Them, by those from whom they derived this Privilege; yet I did not forget that my proper Concern was with the Clergy, to whom I spake. And indeed, my Brethren, your Concern it is more than any Others, seriously to think of these things. Your Liberty; your Interest; your Conscience, all require you so to Do: The very Dignity of your Order depends upon it; which can never long maintain its Credit, if once a Corrupt Traffick prevails among Us; so that the Best Benefices, instead of being bestow'd upon Those who for Piety, and Learning, the Best deserve Them, shall be exposed to such as will give the most Money for Them; or submit to the most sordid, and unjust Compliances, in order to the Obtaining of them.

CONSIDER, I beseech you. how much you not only betray the Rights of the Church, but expose your Own Selves by every Corrupt Bargain that you make, or Undue Obligation that you enter into, for the procuring of a Presentation. Think upon that Servitude to which you subject your Selves, and what a Scandal you must hereby give to all Good Men. But above all, Reflect seriously upon the Oaths you are to take at your Institution, and be not so far misled, as to Hope by any Artificial Glosses, to defeat the Design of the Church in imposing of them; or to delude the Credulity of Those who minister them unto you. You may be so Close in your Conduct as to do both; but yet remember that you cannot deceive either God, or your Own Consciences: And that when you have done all you can, the One will not suffer you, after such a Prevarication, to enjoy any true Peace here;

of the Diocese of *Lincoln*.

here; and that the Other will bring you to Judgment for it hereafter.

IN treating of these matters, I have meddled very little with any Other Law than that which properly belongs to Us of the Clergy to consider; I mean, the Ecclesiastical Canons, and Constitutions of our Church. These, I take, to be the proper Rules by which we are to Judge of them: Our Statutes refer Us to Them; and our Ecclesiastical Judges must proceed in their Censures by Them. Upon the Definitions of these the Oaths against Simony have all along been drawn up; and according to the Tenour of them, as they ever have been, so must they still be, Interpreted. The Patron indeed cannot be deprived of any Right by these Constitutions, which by Law he ought to enjoy: He must be left to the Civil Courts; to the Statutes and Customs of the Realm, for his Punishment. But the Clerk is subject to the Power of them: He must take an Oath pursuant to their Authority, and Determinations; And, if there be any meaning at all in that Clause of the Statute of the 31st of Eliz. c. 6. which continues the Churches Power to judge in Cases of Simony, as if that Act had never been made, He may also be Deprived by virtue of Them. It is for this Cause that I have taken the Liberty, I hope, without Offence, to Reason a little upon the Report of certain Declarations which are said to have been made by the Temporal Judges as to the Nature of Simony: In which whether They went more beyond their Profession in delivering their Opinions so very largely of what was not Simony; Or I have exceeded mine, in my Reflections upon their Opinions, I must submit it to those who shall give themselves the trouble to peruse the following discourse to Determine.

I.E by what I have done, I shall be so happy as to put some Stop to a Corruption so Commonly Practised, that, in many Cases, it is hardly thought to be any fault at all, I shall think my Pains very well bestow'd; and I hope both your selves, and the Church, will reap the Benefit of it. Be the Consequence

To the Reverend the Clergy, &c.

quence what it will, this Satisfaction I cannot fail of, that I shall hereby have shown my Desire to Retrieve what I take to be your just Rights; and to approve my self, as I truly am,

My Reverend BRETHREN,

Your very Affectionate

Friend, and Brother,

W. LINCOLN.

ERRATA.

Page 20. line 16. read *Burdenfome*. P. 37. Not. (p) r. Note c. d. pag. 32.

THE

T H E

Bishop of Lincoln's

VISITATION CHARGE, &c.

My REVEREND BRETHREN,

WHEN I was last with you, I made it my Endeavour to shew you what your *Duty* was, and to convince you of your Obligations, with all faithfulness, and diligence, to fulfil it.

I shall now take occasion to speak to you upon another *Subject*, in which not only your *Duty*, but your *Interests* too, are concern'd: And which I hope you will give me leave, upon Both those Accounts, with a very particular Earnestness, to recommend to your Consideration.

THE Parochial Clergy as they are in Number the Greatest, so I may venture to say that They are in Weight too the most Considerable, Part of the *Ministry* of the *Church of England*. It is by Them that the People are, immediately, *Instructed*, and *Assisted*, in the *Work* of their *Salvation*. From their Hands they receive the *Holy Sacraments*: With them they Assemble for the *Hearing of God's Word*; and by them they offer up their Spiritual Sacrifices of *Prayer*, and *Thanksgiving*, to Him. In short; It is by their *Communion* with you, that they hold *Communion* with the *Catholick Church*; and are joined to their *Bishops* in the true *Order*, and *Unity*, of it. This is your *Dignity*, nor is your *Duty*, which arises from hence, any less: And therefore as the *Piety* of our *Ancestors* has, upon this account, very justly conferr'd several special *Rights* and *Privileges* upon you; so ought those *Rights* to be very carefully preserved by you; and, as much as possible, be freed from any Encroachments which thro' the Ignorance, or Negligence, or Wickedness of Men, may in process of time have been made upon Them.

THIS therefore is That which I would, at present, recommend to your Care and Consideration. I need not tell you how Mean and Discouraging the Circumstances of too many among you are; nor how much your *Rights* and *Interests* have been already invaded; and, I fear, are diminished every Day: Whilst Pride, and Covetousness; the Envy of Some, and the Malice of Others, puts them upon finding out all the ways they can to render you Poor and Indigent: Either to bring you to a *servile Dependence upon them*; or to encrease their *Own Estates* out of the *Church's Patrimony*. And the result has been that *Religion* has suffer'd together with You: The debasing of the Clergy, having not only lessen'd their *Authority*, but sunk their *Esteem* too; and made their very *Doctrine*, like the *Poor Man's Wisdom*, despised; and their *Instructions* not heard. Eccles. ix. 16.

It is therefore, upon many accounts, very necessary, if it be possible, to put some stop to this *growing Evil*: That whilst Her MAJESTY is taking such a pious Care to encrease your Revenues, you may not lose any of those Just Rights which you already Enjoy; or, I am sure ought to Enjoy; for want of a due Care to Assert and Preserve them.

Now these *Rights*, and *Privileges*, of the Church, so far as you are particularly concerned in them, may fall under a three-fold Consideration:

- I. Of such as relate to your *Coming into your Benefices*.
- II. Of your *free Enjoyment* of the *Dues* belonging to Them; when you are in Possession of Them. And,
- III. Of your *Continuance* in Them; unless for some *Crime committed*, you shall be *lawfully Deprived* of Them.

FOR in Every One of These the *Rights* of the Clergy may be, and I doubt, have been invaded; either thro' their *Own Weakness*, or by the cunning *Craft* and *Management* of Others.

I shall at present speak only of the *First* of these; namely those *Rights* and *Privileges*, which relate to your *Coming into your Benefices*.

AND here I take the great, and undoubted *Right*, of the *Parochial Clergy* to be This, *To be put freely into the Possession of Them*; without *Money*; without *Contract*; without so much as any *Promise*, or *Condition*, to clogg You in Your Enjoyment of Them. And because many of the Clergy themselves seem not to have a sufficient Sense of their *Own Rights* in this Particular, as it is but too evident that many of *Their Patrons* have not; it may perhaps be of some use to

Both

Both to deduce this Matter from its Original, as the best means to set it in a true Light.

WHEN the *Apostles* first preached the Gospel to the World, we read *Acts* xiv. 23. that they Ordained Elders in every City, and committed the Care of their New Converts to them. (a) As it cannot be doubted but that those Elders were the same whom we now call by the Name of Bishops, *Tit.* i. 5, 7. So while the number of the Disciples was no greater than One such Person could well look after, and One Place contain, there was no such thing as any Other Church within that District; but all held Communion with the Bishop; Assembled with him for publick Worship, and were in all things subject to his Conduct, and Direction.

Now these Bishops being placed in every City, *Tit.* i. 5. and the number of Converts in most of them, at the Beginning, not very great; it does not appear that there were, for some time, any Parochial Churches, as we now stile Them; or, by consequence, any Parochial Presbyters appointed to officiate in Them.

As the Gospel prevailed; and, in the greater Cities especially, Multitudes both of Men and Women were added to the Church; (b) more Places than one became necessary for the Publick Service of it. For this Purpose the Bishop, with the Consent and Approbation of the People, Ordained Presbyters to officiate in such Congregations; and allotted a certain District to them. (c) But still both these Presbyters, and these Churches, had such a Dependence upon the Bishop and his Church,

(a) Clem. Epist. ad Corinth. cap. xlii. Gives this account of it, Παρεργεσίας ἐν λα-
 ούνῃς, (Sc. Apostoli à J. Christo) καὶ πληροφρονηθέντες διὰ τὴν ἀναστάσεως τοῦ Κυρίου ἡμεῶν
 Ἰησοῦ Χριστοῦ, καὶ πισωθέντες τῷ λόγῳ τοῦ Θεοῦ, καὶ πληροφροεῖας πνεύματι τοῦ Ἁγίου,
 ἐξηλθον εὐαγγελιζόμενοι τὴν βασιλείαν τοῦ Θεοῦ μέλλειν ἐρχεσθαι. Κατὰ χώρας ἐν καὶ
 πόλεις κηρύσσοντες, καθίστανον τὰς ἀπαρχὰς αὐτῶν, δοκιμάσαντες τὰ πνεύματα, εἰς
 Ἐπισκόπους καὶ Διακόνους καὶ μελλόντων πισδεῖν. And therefore Irenæus explaining that
 Passage, *Acts* xx. 17. Where St. Paul is said to have sent for the Elders of the Church of
 Ephesus, thus delivers his Sense of it: Lib. iii. cap. 14. Convocatis Episcopis & Presbyteris,
 qui erant ab Epheso, & à Reliquis proximis Civitatibus. To which agrees the account
 which Eusebius gives of the first Successors of the Apostles, *Hist. Eccl. lib. iii. cap. 4. 21, 22,*
23, &c. And St. Cyprian's of the Churches of Africa; where he says that Jampridem per
 omnes Provincias, & per Urbes singulas, ordinati sunt Episcopi. Epist. lv. Ed. Oxon.
 p. 112.

(b) Hence Eusebius lib. iv. cap. 23. speaks of ἐκκλησίαι πολλαὶ καὶ πᾶσαν πόλιν.
 And lib. vi. c. 43. reckons no less than four and forty Presbyters in the City of Rome.
 Compare Epiphanius. *Har. lxxviii. §. 4. & Har. lxxix. §. 1.*

(c) Com. Apost. xxxi. compare Can. Concil. Antiochen. v. Hence St. Ignatius thus writes
 Epist. ad Smyrn. Μνηστὴς χαρὸς τοῦ ἐπισκόπου τὴν περὶ αὐτῶν τῶν ἀνηκόντων εἰς τὴν ἐκκλησίαν.
 Ἐκείνη βεβαία εὐχαριστία ἡγείσθω, ἥ ἐκ τοῦ Ἐπισκοποῦ ἔστα, ἥ δὲ ἀν' αὐτὸς ἐπιτρέψῃ.
 Ὅπου δὲ φανῇ ὁ Ἐπίσκοπος, ἐκεῖ τὸ πλῆθος ἔστω, ὥστε ὅπου δὲ ἡ Χρὶςτος Ἰησοῦς,
 ἐκεῖ ἡ καθολικὴ ἐκκλησία. Οὐκ ἔξόν ὅτι χαρὸς τοῦ Ἐπισκόπου ἔτε βαπτίσεν ἔτε
 Ἀγάπῃ

Church, that there was but One *Font*, and (as many have thought) but One *Altar*. Here the Sacrament of *Baptism* was solemnly administered; the Offerings of the People made; and the *Holy Eucharist*, if not alone, yet principally, Consecrated. Here all the *Priests* of the Other Churches Communicated together with the *Bishop*: From hence the *Consecrated Elements* were sent to be distributed by Them in their Congregations. So that All the Christians of such a *City* or *Distric*t, were, in effect, but One Church; One *Parish*; of which the *Bishop* had the Care: The *Presbyters* were but as his *Curates*, to Officiate under Him; and to Assist him in such *Assemblies*, where he could not be present Himself; and that commonly at such Times only, and for such Offices, as he directed and allow'd.

Thus the Case stood for the first three hundred Years: Whether they had hitherto any *Congregations* in the Country, as (d) *Eusebius* seems to intimate that they had, (tho' otherwise we find not any certain Marks of them) I shall not now Enquire. It will be more to my present purpose to Observe, that however the *Approbation*, or *Consent*, of the People might be ask'd, (as we know it was usually taken;) for the *Ordination*, or *Establishment*, of such *Ministers*; (e) yet the whole disposal, and appointment of them to their respective Charges, depended upon the *Bishop*; in whose Place they Officiated; to whose Authority they were subject; and by whom they were limited, and directed, in the discharge of their duty under Him. Hence it was that the *Bishop* was look'd upon, to have the disposal of all the Churches of his *Diocese*, by (f) *Common Right*: Which being All, originally, but so many several parts of his Own *Congregation*, over which he is placed by *divine Authority*; and which, as such, are all

Ἀρέτιον ποιῆν, &c. §. viii. Compare Epist. ad Polycarpum §. iv. Ad Ephes. §. v. Ad Magnes. §. vi, vii. Ad Philadelph. §. iv. Ad Trallian. §. ii, iii. Vid. etiam Justin Mart. Apolog. verif. fin. Edit. GL. Fol. p. 98. C. The Reason of which is thus given in the xxxixth of the Apostolical Canons: Οἱ Πρεσβύτεροι καὶ Διάκονοι, ἀνὰ γνώμης τοῦ Ἐπισκόπου μηδὲν ἐπιτελείωσαν. Ὁ αὐτὸς γὰρ δεῖν ὁ ἐπισκοπῶν ἢ λαὸν τῆς κλῆσης, καὶ τὸν ἵερὸν τῆς ψυχῶν αὐτῶν λόγον ἀπαληθηνόωσθαι. See Bishop Beverege's Notes on this Canon, particularly as to the Right of Baptizing, which both Tertullian, and St. Jerom himself, confesses, neither the *Presbyter*, nor *Deacon* had; without the Command or Leave of the *Bishop*.

(d) Euseb. Hist. Eccles. Lib. ii. c. 3. καὶ ὅσα ἀνὰ πάσας πόλεις τε καὶ κώμας, πληθύνουσιν ἄλλων δὲ δίκην μυελανδρεί καὶ παμπληθείς ἀδελφῶς ἐκκλησίαι (ὡς εἶπε).

(e) See St. Clement's Epist. to the Corinthians, Sect. xlv. Epist. St. Cyprian, xxxviii, xxxix, xl. Edit. Oxon.—Thomassin. discipl. de l'Eglise. par. i. l. ii. ch. 5.

(f) Gregor. Tolosan. Part. Jur. Canon. lib. i. Tit. xxviii. cap. 11. —Alteserra in Decret. l. iii. de Institur. cap. vi. —Francisc. Leo. prax. for. Eccles. cap. xviii. n. l. c. xxi. n. 26.

of Them properly his Cure; It was but fit that He should chuse such *Assistants* to take a part with him in his *Ministry*, as Himself approved; and at once both *Ordain* Them for it, and *Place* Them in it.

WHEN the Empire became *Christian*, and the numbers of Converts thereupon very much encreased; it was necessary to multiply the *Places* of their *Assembling*; and to appoint *Presbyters* to officiate in Them. Upon this occasion what was done in the *greater Cities*, (and perhaps in some few *Places* in the Country) before, began now to be extended to the other *Towns* and *Villages* there. They had *Churches* Erected; and certain *Districts* allotted to them; and *Ministers* Ordain'd to Officiate in them. But then, as this was not done without the *Approbation*, and *Consent*, of the *Bishop*, so neither did it at all affect his *Original Right*. (g) He still continued to have the sole Power of *appointing* those who were to supply these *Cures*: Nor had the *Founders* of such *Churches* any other Privilege than that of the People, viz. to *Recommend*, and *Approve*, the *Persons* who were to be *Ordained* for Them; and to *Assemble* for *divine Worship* in them. Infomuch that the very (g) *Endowment* of these *Churches* was in the *Bishops*, not the *Founders*, disposal; to whom (h) the *Souls* of the *People*, even in such *Parishes*, were still reckon'd to be committed.

(g) Vid. xvi. qu. 7. cap. *Pia Mentis*: & cap. *Frigentius*. Where speaking of the Foundation of two Churches, the *Bishops* are required to dedicate them: But with this express Declaration, that the Founder of Each should know, *Prater Processionis aditum, qui omni Christiano debetur, nihil ibidem se proprii juris habiturum*: Or, as it is in the other Chapter, *Nihil sibi fundator ex hac basilica noverit vendicandum, nisi processionis aditum*. What this *processionis aditus* means, the *Canonists* are not agreed: The *Old Gloss* upon these *Decrees*, will have it to be the *jus patronatus*: But this the later *Expounders* of them will by no means allow of. They interpret it more reasonably of the common Right of having divine Service perform'd in the Churches so founded by them; or at most, of some honourable Place and Privileges, to be allow'd to the Founder in his Own Church. See *D'Artis de Beneficiis, sect. vi. c. 5. Jan. Acosta in iii. Tit. 38. de Jur. Patronat. Gonzales. in eund. Tit. Cap. Nobis fuit. Vid. Alteser. in iii. decret. cap. xxvi.* And this they prove by those *Decrees* of the third and fourth Councils of *Toledo*; in the former of which the *Founders* are forbidden so much as to reserve to themselves a Power over the *Endowment* of their Own Churches: x. qu. 1. cap. *Sic quidam*. In the latter they are declared to have no Power in any thing which they bestow upon them, *ib. cap. Noverint*: But in both the *Bishop* is invested with the whole Authority over both the Church, and its *Patrimony*, according to the ancient *Constitutions*, and *Canons* of the Church: *Omnia secundum Constitutionem antiquam ad Episcopi Ordinationem & Potestatem pertineant*; says the One; *Juxta Canonum instituta, sicut Ecclesiam, ita & Dotem ejus, ad Ordinationem Episcopi pertinere* [Noverint; sc. *Conditores Basilicarum. ib.*] says the Other. See the *Gloss* upon *Can. Sic quidem ibid. & per tot quest. ib. Conf. Ant. Augustin. Epit. Jur. Pontif. lib. xv. Tit. vi. cap. 8.—Sigismund. Finkhelthaus. de Jur. Patronat. cap. ii. n. 25. & cap. vi. n. 147.*

(h) See x. Qu. 1. Cap. *Quacunque*. All things relating to the Church must be Govern'd and Dispens'd *Cum Judicio & Potestate Episcopi, cui totius plebis Anima videntur esse Commissa*. It is part of the xxivth. Canon of the Council of *Antioch*; and gives the sense, tho not the Words of it. Compare xii. *Quest. 1. precipimus.*

The

THE first Breach that was made upon the *Bishops Right* in this Particular, was towards the middle of the *Fifth Century*: When in favour of such *Bishops* as founded any *Churches*, or *Oratories*, in another *Bishop's Diocese*, (i) it was decreed, "That the *Bishop* of the *Diocese*, should *Ordain*, or *Allow*, such *Priests* to minister in *Them*, as the *Bishop* who founded any such *Church*, or *Oratory*, should desire". They look'd upon a *Bishop* to be so well qualified both to Chuse, and to Judge of, those who were to be admitted to such an Office, that they might safely put such a trust into his Hands: But still both the *Dedication*, and *Government* of the *Church*, and of *Him* who ministered in it, was left to its proper *Bishop*; whose jurisdiction, even in such foundations, and over such *Presbyters*, remained whole and undiminish'd.

WHAT the *Bishops* of the *Church* seem thus equitably to have allow'd to those of their *Own Order*, was soon extended, by the *Imperial Authority* first, afterwards by their *Own Consent*, (k) to the *Laity* also. The *Council of Agde*, An. 506. had yielded, that "Those who were at a distance from their *Parochial Churches*, might build *Chapels* for their *Own* and their *Families Use*; and have *divine Service* administred in them; except upon some of the *Greater Festivals*, when they were All obliged to Go to their *Parish Churches*". And it was not long after that the *Founders* of these *Oratories* prevail'd with the *Emperour* (l) *Justinian* to *Ordain* in favour of them; that *They might nominate to the Bishop fit Persons to Officiate in Them*: But if the *Persons* they named were not so qualified as the *Canons* required, it was left to the *Bishop* to re-

(i) Concil. Arausic. i. An. 441. Can. x. Si quis Episcoporum in alienæ Civitatis Territorio Ecclesiam ædificare disponit — permittat licentiâ ædificandi (quia prohibere hoc Votum nefas) non præsumat Dedicationem, quæ illi Omnimodis reservatur in cuius territorio Ecclesia assurgit: Reservatâ ædificatori Episcopo hæc gratiâ, ut quos desiderat Clericos in Re suâ videre, ipsos Ordinaret Is cuius Territorium est; vel si Ordinati jam sunt, Ipsos habere acquiescat. Et omnis Ecclesia ipsius Gubernatio ad Eum, in Cuius Civitatis territorio Ecclesia surrexit, pertinebit.

(k) Concil. Agathens. Can. xxi. Siquis, etiam extra Parochias in quibus legitimus est ordinariusque Conventus, Oratorium in Agro habere voluerit; reliquis Festivitatibus, ut ibi Missas teneat propter fatigationem familiæ, justâ Ordinatione permittimus. — Clerici verò si qui in Festivitatibus — in Oratoriis, nisi iubente, aut permittente Episcopo, Missas facere, aut tenere voluerint, a Communionem pellantur.

(l) Novell. cxxiii. cap. 18. An. 541. "Εἰ τις ἐκκλησίαν οἶκον, καλασκηδῶς, καὶ βελανθῆν ἐν αὐτῷ κληρικῶς περιβάλλετω, ἢ αὐτὸς, ἢ οἱ τέτε κληρονόμοι, εἰ τὰς δαπάνας αὐτοὶ τοῖς κληρικῶς χορηγήσουσι, καὶ ἄξιως ὀνομάσουσι, καὶ ὀνομασίᾳς χειροτονήσῃ. [Sc. Θεωρίζοντες.] Εἰ δὲ καὶ παρ' αὐτῷ ἐπιλεγένης, ὡς ἀναξίως καλῶσιν οἱ θεοὶ κανόνες χειροτονηθῆναι, τιμικαῦτα ὁ τὸ τόπων θεότατος Ἐπίσκοπος, ὡς ἀννοήτως παλλίονας, περιβάλλετω φρονιζέτω. Θεωρίζοντες δὲ, καὶ εὐλαβεσάμενοι κληρικῶς ἢ ἰδίαις ἐκκλησίαις παρεμύειν, καὶ πᾶσαν αὐτοῖς ἀρμόζουσαν ἐκκλησιαστικὴν ὑπηρεσίαν πληρῶν· τὸ τοῦ πάντως ζήλοντος τῷ ἐκάστης πόλεως ἀσπιλάτῃ Ἐπισκόπῳ.

ject them, and to appoint such Others, as he thought fit, to Minister in their stead. What the result of this Indulgence was, we may, in good measure, conclude from that decision of the (m) Council of Orleans, which was made about the same time. These Lay Patrons soon began to overlook the Bishop; and to bring in foreign Clergy-Men unapproved of by him: Which being more than the Emperor had allow'd, was expressly forbidden by the Authority of that Synod. And it was but (n) a little after that the same Emperor Decreed, "That if any One were minded to build, or endow a Church; He should not be at Liberty to send whom He would to the Bishop, to be Ordained to it; but the Bishop should have the Examination, and Approbation, of every such Clerk; and not admit any but whom he thought fit to serve in the same.

THUS stood this matter about the End of the Sixth Century: (o) No Church, or Oratory, might be founded within the Diocese of any Bishop without his Consent; but that being obtained, the Lay-founders had a Right to Nominate any proper Person to the Bishop to be Ordained to the Chapels erected within their own Lordships; the Ecclesiastical, to any Churches of their own Foundation; the Examination, Approbation, and Admission, being still Reserved to the proper Bishop.

BUT in the next Age this Encroachment went yet farther; (p) whilst to encourage Lay Patrons not only to Found, and Endow, but also to take care of the Churches of their Own Election; they were allow'd, generally, "To present to the Bishop fit Persons to Officiate in them: And if the Bishop presumed to reject their Clerks, and

(m) Concil. Aurelian. iv. An. 541. Can. vii. Ut, in Oratoriis, Domini prædiorum, minime contra Vorum Episcopi, ad quem Territorii ipsius privilegium noscitur pertinere, peregrinos Clericos intromittant: Nisi forsitan quos probatos ibidem districtio [discretio] Pontificis Observare præceperit.

(n) Novell. lvii. An. 555. See Gotosfred. "Εἰ τις οἰκοδομήσας ἐκκλησίαν, ἢ καὶ ἄλλως χορηγῶν τοῖς ἐν αὐτῇ λειτουργήσι σιτήσεις, βάλῃσιν τινὰς κληρικὸς ἐγκαθίσταν αὐτῇ, μὴ ἔνδ' αὐτῷ παρρησίαν μηδεμίαν ἔς βέλῃ καὶ ἔξουσίαν προσάγειν τῇ σῇ Θεοφιλίᾳ, ἐφ' ὅτε χειροτονῶν αὐτὸς ἀκρίτως, καὶ ἀνεξέλεστος, ἐμὰ προσασσάμενος αὐτὸς ἐξέλῃ, ἔσθ' ὅρα τὴν σὴν Ἀσιωσίνης, &c. — Ad Mennam Patriarch.

(o) Novell. lxvii. cap. 1, 2. Et Novell. cxxxi. cap. 7. Vid. Gregor. Tolos. Partit. Jur. Canon. lib. i. Tit. xxvii. de Benefic. cap. 8. nor. m. & cap. 10. n. 2. Et Institut. Rei Beneficiar. cap. xiii. n. 6. Alteserra in iii. Decret. cap. v. Fevret. de l'Abus. liv. ii. chap. i. §. 4, 5. & cap. iii. §. 8. Sigismundus Finkelthaus. De jur. Patronat. cap. iv. n. 6.

(p) Concil. Toler. ix. An. 655. Can. ii. — Decernimus ut quamdiu — Fundatores Ecclesiarum in hac Vita Superstitibus extiterint — Rectores idoneos in iisdem Basilicis iidem ipsi offerant Episcopis Ordinandos. Quod si tales forsitan non inveniantur ab Eis, tunc quos Episcopus loci probaverit Deo placitos, Sacris Cultibus Instituat, cum Eorum Conniventia, Servituros. Quod si spretis eisdem Fundatoribus Rectores ibidem præsumpserit Episcopus ordinare; & Ordinationem suam irritam noverit Esse, & ad Verecundiam sui Alios in Eorum loco, quos iidem ipsi Fundatores condignos elegerint, Ordinari.

" *Institute any Others*, it was resolved that their *Institution* should
 " *be void*, and the *Persons* be received whom the *Founders* had nomi-
 " *nated*". 'Tis true this Privilege was, (q) at first, restrain'd to the
 Person of Him who *Erected* the Church; but that lasted not long:
 For in the very next Age (r) St. Boniface speaks of the *Lay-Nomina-*
tion as a thing that was settled, and allow'd: And in the next af-
 ter, the (s) Council of Paris takes notice of the " *Complaints* of
 " such *Patrons* against the *Bishops* for *refusing* to *Ordain* their *Clerks*,
 " tho' fit, and approved; and decrees, That if any *Lay-Patron*
 " *offered a Person* who was qualified for Holy Orders, the *Bishop* should
 " *not reject him* without a particular Reason; and that he should be di-
 " *ligently examined*, and it should be evidently proved that he ought
 " *to be refused*. From henceforth the *Right of Patronage* became
 firm, and indisputable: (t) The *Bishops*, for the Good and Benefit
 of the Church, being content to depart so far from their *Original*
Right, as to allow those who *Founded*, *Endowed*, or otherwise un-
 dertook the *Protection* of any Church, and of the Goods and *Members*
 of it, to *Recommend* (that was the ancient (u) *Canonical Phrase*)
 such *Persons* as were to be *Ordained*, and *Instituted* to it; if they
 appeared, upon *Examination*, to be worthy of such an Honour.
 What the *body* of the *People* were wont to do before, the *Patrons*
 now did for them; into whose *Rights* and *Privileges*, (together
 with some farther ties upon the *Bishops*, which the *People* never
 had;) they were, for the reasons before mentioned, admitted; with
 the *tacit Consent* both of the *Bishops* and *People*.

Now this being the true State of the Case, as to the *Original* of
 the *Right of Patronage*; these three *Conclusions* will, I conceive, plain-
 ly, and naturally follow from it, with relation to the Subject I pro-
 posed to consider:

(q) *Ibid.* And therefore in the *Canon* before cited, instead of *Spretis fundatoribus*, some read *Superstitibus*. Vid. Ant. Augustin. Epit. jur. Can. lib. xv. Tit. vi. cap. 9.

(r) An. 745. Statut. S. Bonifacii apud d'Acherium Tom. ix. Spicileg. p. 63. cap. vi. vii.

(s) An. 829. Concil. Paris. vi Can. xxii. De Clericis vero Laicorum, unde nonnulli Eorum conqueri videntur, eo quod quidam Episcopi ad Eorum preces nolint in Ecclesiis suis Eos, cum Utiles sint, Ordinare; Visum nobis fuit, ut in utriusque partibus Pax & Concordia serveretur, & cum caritate & ratione Utiles, & Idonei, eligantur. Et si Laicus Idoneum Utilemque Clericum obtulerit, nullâ quâlibet Occasione ab Episcopo, sine certâ ratione, repellatur: Et, si rejiciendus est, diligens Examinatio, & evidens ratio, ne scandalum generetur, manifestum faciat. Comp. Ant. Augustin. Epit. Jur. Canon. Vet. Lib. xv. Tit. vi. cap. 11. Ex Concil. Wormat. cap. 49.

(t) See Decret. lib. iii. Tit. de Jure Patronatus: Gregor. Tolosan. Instit. Rei benefic. cap. xviii. n. 3. Sigismund. Finkelthaus de Jur. Patronat. cap. ii. n. 6.

(u) See Gonzal. in iii. Decret. de Jur. Patron. cap. *Præterea quia*. num. v. Statut. S. Bonifacii. Spicileg. d'Acher. Tom. ix. p. 63. n. vii.

1st. THAT no Patrons can have any more or greater Authority in this Matter, than what the Laws of Christian Princes; the Canons of the Church; and the Consent of the Bishops, in whose Right they Act, have granted to Them.

AND that, as I have before shewn, is a meer Right of Nomination: A Right to present to the Bishop a fit and worthy Person, to be Ordained for, and Admitted into, such Churches, the Patronage of which belongs to Them. For this is All that was ever allow'd to Them: (x) And therefore when some Patrons heretofore would have absolutely Invested their Clerks in, and put them out of, the Possession of their Churches, without the Bishop's Knowledge or Assent; both Themselves, and their Clerks, were Excommunicated: the One for presuming to Usurp such an Authority as had never been granted to Them; the Other for betraying the Rights of the Church, and submitting to their Rash and Unwarrantable Usurpations. And even as to the Right of Nomination its self, it was not absolutely granted to Them; but with such Restrictions, and under such Cautions, as the Good of the Church was thought to require.

HENCE we find a (y) Difference made between the Lay-Patron, and the Ecclesiastical; and a certain Time prescribed to Both, within which if they either did not Nominate any Person at all; Or, if the Person whom they did Nominate, were not qualified as he ought to be; the Bishop re-assumed his Original Power, and presented to the Church for that time.

It was upon the same Ground that the Laws of the Church allow'd (z) a Lay-Patron to Vary, or Accumulate, his Presentation, but not an Ecclesiastical: (a) They permitted not Either to Nominate a Son, to the same Benefice which his Father had possess'd before: And still whomsoever either the One Patron, or the Other, Nominated, He was to be Presented to the Bishop; to be Examined, and Admitted by Him, if He were Worthy; Or else, notwithstanding any such Presentation, to be utterly Rejected and Lay'd aside.

IN short; It was for this reason, (b) that no One, under the pretence of this Right, was permitted to meddle with the Revenues

(x) xvi. qu. 7. De Jure patronat. cap. Præterea quia. Vid. Gonzal. Comment. ib. Compare Anton. Augustin. Epit. Jur. Canon. lib. x. Tit. 10. Et lib. xv. Tit. vi. & vii.

(y) Ant. Aug. Epit. Jur. Can. lib. xv. Tit. xiii. Lancellot. Instit. Jur. Canon. lib. I. Tit. 28. Duaren. de Benefic. lib V. cap. 4. & 5. Francisc. Leo. Prax. For. Eccles. cap. xviii. n. 41. & c. xxi. n. 23. Sigismund Finkelthaus de jur. Patron. C. vii. n. 8.

(z) Vid. Locc. Cirt. Add. De Jur. patronat. Cap. Quod autem. Et Gonzalem in illud Caput. D' Artis. de Beneficiis. Sect. IV. Cap. I. Et Sect. vi. cap. 6. Francisc. Leo. Prax. For. Eccles. cap. xxi. n. 8. Cyc. ad. 14.

(a) Lynwode. De filiis Presbyt. Cum à Jure sit inhibet.

(b) xvi. qu. 7. De Jur. Patronat. Cap. IV. Francisc. Leo. loc. cit. cap. xxi. n. 16.

of any Church; Or to lay any Burden upon the Person whom They presented to it. And having once Nominated a fit Person to a Benefice, the Ordaining, and Governing of Him, from thenceforth belong'd intirely to the Bishop: Nor had the Patron any Right or Power, either to Remove him from the Church to which He was admitted; or to meddle with his Conduct and Ministration in it. But,

2dly. SINCE the Right of Patronage was, Originally, the Bishops Right; into which, for the Reasons before mentioned, Those whom We now call Patrons were allow'd to succeed; It will follow farther, That they cannot have any Other, or Greater Right, than the Bishops themselves would have had; supposing They had still kept this Power in their Own Hands; but must exercise it under the same Restrictions and Limitations, that the Bishops (whose Authority They have) were, and would have been, Obliged to do.

Now the great Restriction that was laid upon the Bishops by the most early Canons of the Church, was this; (c) To bestow these Offices freely, without any regard either to their Own Interest, or to the Benefit of Others, in the disposal of Them. They thought it unfit that the Grace of the Holy Spirit, confer'd by the Sacred Orders of the Church; and the Power of dispensing the Word of God, and the Sacraments of the Gospel, should be made a matter of Traffick: And they wisely foresaw what detriment would, in time, accrue to the Church, if in the Establishment of its Ministry, the Bishops should be permitted to consult their Own Inclinations or Advantages, more than Her Edification; and Chuse Those to take upon Them the Cure of Souls, not Who were the best qualified, for Piety and Learning, to discharge that great Trust; but by whom Themselves could gain most; or their Friends and Families be the best served.

THIS therefore the (d) Apostolical Canons first, then the General Council of Chalcedon, expressly forbid: They contented not Themselves to caution the Bishops against such a profane and Sacrilegious Commerce, but they prohibited it under the pain of Deposition: And Ordered, that both the Person who was advanced for any such Considerations should lose the dignity he so unworthily obtain'd; and

(c) 1. Quæst. 3.—See Duaren. de Benef. lib. vi. capp. ii. v.—D' Artis de Beneficiis. Sect. v. cap. 2. Greg. Tolosan. lib. i. Tit. xxviii. de Benefic. in Part. Jur. Can. cap. 15. Sigismund. Finkelthaus cap. vi. n. 132. Græc. Francisc. Leo. Prag. For. Eccles. c. xxxii. n. 7.

(d) Can. Apost. xxix. xxx. Ἐἰ τις Ἐπίσκοπος, διὰ χρημάτων ἢ ἀξίας ταύτης ἐσκεπτής ᾤκησῃ, ἢ Πρεσβύτερος, ἢ Διάκονος, καὶ αὐτὸς καὶ ὁ χειροτονήσας, καὶ ἐκκοπτέω τὴν Κοινωνίαν παντάπασιν. Compare Can. ii. Concil. Chalcedon. Where the Punishment is extended to all who are any ways concerned in such an Unlawful Commerce. Ἐἰ δὲ τις καὶ μεσιτεύων φανῇ τοῖς ἕως αἰχρῶς καὶ ἀδεμίτοις λήμμασιν, καὶ ἄλλοις, εἰ μὴ κληρικὸς εἴη, τὸ οἰκεῖν ἐκπιπλέτω Βαδμῶ: εἰ δὲ λαϊκὸς ἢ μονάζων, Ἀναθεματίζετω.

if any *Others* were *accessary* to it, They too, if *Clergy-Men*, should be *degraded*; if *Laymen*, should be *Anathematiz'd*.

It cannot but be a matter of just wonder, how such a sordid and pernicious practice, should so soon Creep into the Church, as by these *Canons* it is apparent that it did. But it is far more astonishing that notwithstanding both These, and many more *decrees* to the same purpose, it should nevertheless still go on, and at last appear with an Open Face; as by the Renewal of these *Canons* in the (e) *VIth* and *VIIth* General Councils, we have too much ground to fear it had done. Inasmuch that we are told by the *Latter* of These, that "Some not only *Bought* their *Orders* and *Dignities*; but, with an Impudence becoming such *Hucksters*, *Reproached* Those who were Chosen by the *Holy Ghost* for their *Piety*, without any *Gift*, or *Reward*". What therefore the *Ecclesiastical Authority* could not, the *Piety* of the *Christian Emperours* endeavour'd to Effect. They publish'd the strictest *Laws* that could be made to *Restrain* this *Enormity*; and decreed the most severe *Penalties* against Those who should presume to *Act* contrary to Them.

First, (f) *Leo* and *Anthemius* Ordained, "That both the *Giver*, and *Receiver*, in this Case, should not only be *Degraded*, but "should moreover be condemned to *perpetual Infamy*. This (g) *Justinian* confirmed in the very beginning of his Reign: And the better to put an End to all such corrupt practices, in two other *Laws* published about twelve years after, (h) He Enacted, That when a *Bishop* was to be Chosen, the *Clergy*, and *Chief Persons* of the

(e) See Can. xxii. Concil. vi. in Trullo. Et Zonar. Comment. in Eund. Μυελοι Κανόνες περὶ τῆς διαφόρουσιν, ἀλλ' ἐστὶ τὸ κανόν, ὡς Γάργρανα, τὰς ἐκκλησίας ἐνέμελο. Et Concil. vii. Gen. Can. v.—Τὸς ἐν ἐκκαυχόμενος διὰ δόσεως χρυσίῳ τελευτᾶ ἐν ἐκκλησίᾳ, καὶ ταύτῃ τῇ πονηρᾷ ὡνηθεὶς ἐπελπίζοντας, τῇ ἀλλοτρίᾳ ὑπὸ τῷ Θεῷ καὶ πόσεως Ἱερωσύνης, καὶ ἐν τῇ αὐτῇ περὶ αὐτῶν καὶ ἀπεικαλύπτῃ εὐμασί, ὀνειδιστικοῖς λόγοις τοῦ δι' ἀρετῆν βίον ὑπὸ τῷ ἁγίῳ Πνεύματι ἐκλεγέντας, καὶ κατεχέντας ἐκτὸς δόσεως χρυσίῳ, ἀτιμάζοντας—The Canon ordains to be punish'd. q. v.

(f) Cod. lib. I. Tit. 3. Leg. 31. Circ. Ann. 469.

(g) Ἐστὶ θεοπίστον (καθὰ τοῖς θεοῖς δίδωσαι κανόνι) μήτε ἐπίσκοπον—μήτε Πρεσβύτερον, μήτε ἄλλον οἰασθῆναι ἀξίας κληρικὸν ἐπιδόσει χειροτονείας.—ἀλλὰ καὶ κείσιν καὶ δοκιμασίαν τῇ καὶ πόπον θεοφιλεσάτων Ἐπισκόπων τέως περὶ ἀλλοτρίᾳ. If any one should do otherwise, whether Bishop or other Clergyman, καὶ τῷ παρὲς ὁρίῃ, καὶ τῷ λαμβάνοντι, ἔξω τῇ Ἱερωσύνης καὶ τῇ κλήρῳ γίνεσθαι κηρύσσον. Cod. lib. I. Tit. 3. leg. 42. n. 9.

(h) The form of the Oath to be taken by those who gave their Votes, is thus set down. Novel. cxxiii. c. 1. Ὅτι ἔτε διὰ τίνα δόσιν, ἔτε διὰ ὑποχέσιν ἢ φιλίαν, ἢ δι' ἄλλῳ οἰανδῆσιν αἰτίαν—ἐπὶ ἑξῆς. Compare Novell. c. xxxvii. cap. 2. The Bishop elected was to swear thus; ὡς ἔτε δι' ἑαυτῶν, ἔτε δι' ἑτέρων περὶ αὐτῶν, δίδωκέ τι, ἢ ὑποχέσθω, ἔτε καὶ ταῦτα δόσιν, ἢ αὐτῶν πρὸς χειροτονίᾳ Ἀυτῶν, ἢ τοῖς τὰ ψήφισμα εἰς Ἀυτῶν ποιησαμένοις, ἢ ἑτέρῳ τῷ πάντων τινί, ὑπὸ τῷ εἰς αὐτὸν γινόμενης χειροτονίας. Ibid.

" City, before they gave their *Votes* in such an *Election*, should
 " Swear, that *They* would not *Nominate* any One either for *Money*, or
 " *Promise*; for *Favour*, or *Friendship*; or any Other *Affection* whatso-
 " ever. And that the *Person Nominated* should also, on his Part,
 " Swear; That *He* had not *Given*, nor *Promised*, any thing; either by
 " himself, or by Any Other; nor would hereafter Give any thing either
 " to *Him* who *Ordained Him*, or to *Those* who *Voted* for *Him*, or to
 " any Other upon the account of the Order which *He* was about to
 " receive".

THIS Law continued in force under the following *Emperours*; and was an Age and half after renew'd in the great *Body of Laws* publish'd by (i) *Leo* and *Constantine*: Who Themselves (k) farther Enacted, " that No One should be made a *Bishop* by giving of
 " *Money*, or any Other thing; upon pain of *deprivation* both to
 " *Him* who *Gave*, and to *Him* who *Received* it; and that what
 " was so *Given* should be *Confiscated* to the *Church* which was to
 " have been *Purchased* by it: And if any *Bond* or *Pledge* was gi-
 " ven for the *Security* of such a *Payment*, it was to become *Void*,
 " and no *Action* to be allow'd upon it; but every such *Bond*, or
 " *Pledge*, was to be *Restored*, and the value of it to be *forfeited* to
 " the *Church*". The same was to be the Case of every Other *Cler-
 gy-Man*; (l) who was, in like manner, forbidden to give any thing
 to the *Bishop* by whom he was *Ordained*, and to be *punished* if He
 should *Presume* so to do.

SUCH was the Care both of the *Church*, and *Empire*, to restrain this pernicious and growing Evil, in the *East*: Nor were they any less sollicitous to suppress it in the *West*. The (m) Council of *Orleans* not only forbade any *Bishop* to take Any thing for *Ordaining* a *Clerk*; but decreed, " that if any One, out of a *Cursed Ambition*,
 " got a *Benefice* by the *Merchandise* of *Money*, He should be cast off
 " as a *Reprobate*; because, according to the *Apostles* decision, the
 " *Gift* of *God* ought not to be bought with *Money*. (n) The Council of
 " *Braga* determined to the same Effect; and pronounced an *Anathema*
 " both against the *Giver*, and *Receiver*, in this Case. (o) The Coun-
 " cil of *Tours* declared such *Trafficking* to be both *Sacrilegious*

(i) Basilicôn. lib. iii. Tit. I. num. viii.

(k) Ibid. num. ix.

(l) Ibid. num. xxviii, xxix.

(m) Concil. Aurelian. ii. A°. 533. Can. iii, iv. Siquis Sacerdotium per pecuniæ nun-
 dinum execrabili Ambitione quæsierit, abjiciatur ut Reprobis, &c. —

(n) Concil. Bracarenf. iii. A°. 572. Can. 3. Anathema danti & accipienti. Vid. Garfiz
 Not. in Can. antedict.

(o) Concil. Turrenens. ii. Can. 27.

“ and *Heretical*. (p) The vith. Council of Toledo order'd such a *Simoniackal Purchaser* to be not only *Excommunicated*, with his *Ordainer*; but that *Both* should incur the forfeiture of *All their Goods*. “ And when notwithstanding all this Care and Severity, the *Unwarrantable Commerce* still went on; another Council of the same place increased the Penalty, and decreed, (q) “ That if *Any One* “ were found to have offer'd any Reward for his Admission to the “ *Priesthood*, He should from thenceforth be *Anathema*; and cut off “ from the *Communion* of *Christ's body and blood*: And if He “ were *Accused* of it, should be degraded from his *Office*; and be “ confined to a perpetual Penance, in some *Monastery*, for his *Offence*.

It would be infinite to mention all the Other (r) *Canons*, and *Decrees*, that were made to Restrain this practice in these *Western Parts*. It was the Custom of Pope (s) *Adrian* the 1st. as Himself tells us in his Letter to *Charles* the Great, before He *Confirmed* any *Bishop*, not only strictly to *Examine* Him whether He had *Given*, or *Promised*, any thing for his *Promotion* Himself; but to make him take a *Solemn Oath* in writing, that He would never Receive any thing for his *Imposition of Hands* upon Others. (t) *Geoffrey* Bishop of *Chartres*, with the approbation of Pope *Calixtus* the 2^d. made an Order that None of His *Cathedral* should take any thing either by Himself, or by any Other, for any *Preferments*, or *Dignities*, in the same; Nor should any *Canon* give, or promise, any thing by Himself, or by any Other: And that no One should from thenceforth be admitted to any *Dignity* in his Church, till He had *Sworn* in open Chapter, that He had neither *Given*, nor *Promised*, any thing for his *Office*; nor would Require, or Accept of any thing, for the disposal of any *Prebend*, by Himself, or by any Other.

In a (u) *Synod* of *Germany* A°. 1225, the Fathers having first renew'd the ancient *Decrees* against all such *Patrons* as should by any corrupt bargain retain to Themselves a Part of the *Offerings* of those Churches to which They *Presented*; and against Those who should accept their *Presentations*, upon such Terms; the better to prevent, or discover, such corrupt Agreements, Ordained; “ That no Clerk “ should be admitted by any *Bishop*, or *Archdeacon*, to a Cure of

(p) Concil. Toletan. vi. Can. 4. Communionem privatus, cum Ordinatoribus suis Bonorum Amissione damnetur.

(q) Concil. Toletan. viii. Cap. 3.

(r) See Anton. Augustin. Epit. Jur. Canon. Vet. lib. vi. Tit. xlviii.

(s) Concil. Labb. Tom. vi. Col. 1773. A. B.

(t) See his Epistle apud Launoium de Simonia. Cap. xxviii.

(u) Concil. Germanic. Ann. 1225. Can. ix, x, xi.

“Souls, till He had first Sworn that He had not committed any
 “Simony in the obtaining of the *Benefice* to which He was to be Ad-
 “mitted”. And, in the next Century, the Synod of (x) *Palentia*,
 in like manner, decreed; First, “That no Patron should receive any
 “Money, Gift, or Reward, for his Presentation to any Church, upon
 “pain of losing his Right of Presenting for that turn; Nor any
 “Clergy Man presume, by Himself, or by Any Other, to Give, or
 “Promise, any thing upon such an account; upon the like pain not
 “only of being deprived of the Benefit of his Presentation, but of be-
 “ing Incapacitated, for that time, to be Admitted to the Living,
 “for which He had so corruptly agreed: And, Secondly, That for
 “the better discovery thereof, He to whom the Right of Institution
 “belonged, should take a Corporal Oath of the Person presented to
 “Him, before He admitted Him; that He had neither Given, nor
 “Promised any Money, nor any Other Reward whatsoever, either to
 “the Patron himself, or to Any Other for Him; in any Manner of
 “way, either by Himself, or by Any Other.

How far the Latter Canon Law has pursued the same Method, I
 shall not need to say. The (y) Decree of Gratian and the whole
 (z) Title of the *Decretals* concerning Simony, sufficiently declare
 it. I shall only observe that as New ways were found out to evade
 the force of these Canons, and carry on this detestable Commerce,
 in despite of Them; so new Decisions were made to prevent them;
 and all founded upon this general Principle, That there was to be
 no manner of Bargain, Promise, Contract, or Agreement, made, di-
 rectly or indirectly, with any One, for the Procuring or Obtaining
 of any Spiritual Benefice: That they were to be given, and taken,
 freely, and without Restraint: And, lastly; That for the better secu-
 rity hereof, all manner of ways, as well by Oaths, and Witnesses,
 as by other Enquiries, were to be made Use of for the discovery of
 such Contracts; and (a) such Persons to be admitted to give Evidence
 in this, as were not to be allow'd in any Other Case.

AND thus have I shewn you after what Manner, and under
 what Restrictions, the Bishops first, and since Other Patrons have
 succeeded into their Right, They also are obliged by the Canons

(x) Concil. Palentinum. Ann. 1322. Can. xix.

(y) Caus. I. per Tot.

(z) Lib. V. de Simoniâ. Add. I. de Pactis. cap. Ult.

(a) Unius assertione Convincendus est qui Simoniæ labe dignoscitur esse pollutus.---Et in
 tali negotio Quilibet Catholicus non est respuendus. De Simon. cap. Si Dominus. Tanta
 est labe hujus Criminis, quod etiam Servi adversus Dominos, & quilibet Criminosi admit-
 tuntur ad Accusationem. Ibid. cap. Tanta est labe. Etiam Meretrix. ib. And in a Case
 of Exception against Witnesses as infamous, it was resolved, Exceptiones furti, adulterii, &c.
 propter immanitatem Hæresis Simoniacæ—fore repellendas. Capp. Licet Heli. Et Per tuas.

of the *Universal Church*, to *Nominate Clerks* to their *Benefices*. That the *Right of Patronage* is not a *profitable*, but a *fiduciary Right*; and ought accordingly to be used for the *Benefit* of the *Church*, without any *Regard* to their *Own Interest* in the *Exercise* of it.

I add, 3dly, "THAT since this *Right* was, *Originally*, the *Bishops Right*; to whom alone it did at the first belong, and by whose express, or tacit *Consent*, it was afterwards derived to Those who now enjoy it; It will follow farther, That no *Patron* ought to *Exercise* it otherwise than in a *due Subordination* to the *Episcopal Authority*; and so as not to *impair* that *Power* from whence it flows: It being unreasonable to suppose that the *Bishops* should ever have intended, when they granted away their *Right* in this *One Instance*, to prejudice any *Other Parts* of their *Jurisdiction* by it; Or to have consented that it should be made use of to the *detriment* of that *Power* they were before in *Possession* of, and never gave the least *intimation* that they had any thought of *parting* with it.

I have Already mentioned two or three *Instances* of this, in which tho' some *Patrons* attempted to invade the *Episcopal Authority*, yet they were soon stopp'd; nor did they continue to make any progress in it. (b) Such are, the *Right of Ordaining* the *Person presented*, if He be a *Laic*; Or of *Examining*, *Approving*, *Admitting*, or else *Rejecting* him, if He be already *Ordained*. To these I must now add the no less allow'd right (c) of *Governing* the *Beneficiary* after He is *Admitted*; Of *Censuring*, *Suspending*, and even *Depriving* him of his *Benefice*, if He be *Criminous*; Or else of *Retaining*, and *Protecting* him in it, while He behaves Himself as He ought to do: So that it shall not be in the *Patron's power*, either to *Keep* him in his *Benefice*, if He do's amiss; or to *turn him out of it*, if he do's not. And whatsoever *Acts* are done either by the *Patron*, *Clerk*, or *Both together*, in derogation of these *just Rights* of the *Bishop*; as they are plain *Violations* of that *Trust* which has been committed to the *One*, and of that *Duty*, and *Service*, which the *Bishop* has a *Right* to require of the *Other*; so are they, for that reason, of *no force*; nor ought the *Episcopal Power* and *Authority* to suffer by Them.

FROM what has been said, we may now be able the more clearly to discern what the *Rights* of the *Parochial Clergy* are, with Respect to the point first proposed to be consider'd, of their *Coming into Their Benefices*. For,

(1st,) Since no *Patron* can have any *Other*, or *Greater Right*, than the *Bishop* himself, in whose stead he *Acts*, *bad*, or *would*

(b) De Jur. Patronat. cap. Præterea quia. Ibid. cap. Cum laici. Et Cap. Relatum est.

(c) xvi. Qu. 5. Et qu. 7. cap. 29. 37. 38. Et xviii. qu. 2. Quidam. Et De Jur. Patronat. cap. Præterea quia. Et Gonzal. in Text. Ibid. cap. Querimoniam.

have had; It will follow, that whenever a Church becomes *Vacant* either by the *Death*, *Cession*, or other *Removal* of its *Incumbent*, it ought to be filled within a *Convenient Time*; at least within such as the *Canons*, or *Custom* of the Church, have prescribed for that Purpose.

THIS is, in the first Place, the *Right* of the *People*; who ought not to be too long *left destitute* of a *Pastor* to take care of Them: But it is withal the *Right* of the *Clergy* too; that so the *Revenues*, the *Buildings*, and Other *Interests* of the Church, may not suffer *damage*; which by a Longer *Vacancy* could hardly be avoided.

IT is for this reason that the (d) *Ecclesiastical Law* hath taken special Care to prevent, or correct, the *Negligence* of *Patrons* in this particular; by limiting them to such a *time* to *Present* their *Clerk* in, as may at once both leave them sufficient *leisure* to enquire into the *Life* and *Manners* of the *Person* whom they design to *Nominate*; and yet not turn to the *detriment* of the *Cure*, by suffering it to lie too Long *Vacant*. And if, on the One Hand, its determinations in this particular may seem to carry some little *Partiality*, in allowing (e) the *Lay Patron* but *four months*, whereas it leaves the *Ecclesiastical* One *Six* to *present* his *Clerk* in; yet is that abundantly made up by the liberty which is granted to the *Former*, beyond the *Latter*; that the One may (f) *Vary* his *Presentation*, and *Nominate*, a *second*, or *third*, which the other cannot; and, if his *first Clerk* be found *Unworthy*, He may, by the favour of the *Ordinary*, (g) *present Another*, which the *Ecclesiastical Patron* is not allow'd to do.

BUT tho' in these Circumstances the *Laws* of the Church have made some difference between a *Lay Patron*, and an *Ecclesiastical*; yet is the Case of *Both*, in substance, the same. They are *Both* obliged to *fill* their *vacant Benefice* within *six Months* at the farthest; which if Either of them shall forbear to do, the *Right* returns to the *Bishop* from whom it was derived; who is, for that time, left at Liberty to supply their Defect, and see that his *Cures* be not Neglected.

(2dly,) The *Clerk* being thus *Nominated* by his *Patron*, has a *Right*,

(d) Ant. Aug. Epit. Jur. Canon. lib. xv. Tit. 13.

(e) De Jure patronatûs. cap. 3. & 27. Add. 6. Eod. Tit. Cap. Unic. Franc. Florent. ad iii. Decret. Tit. 38. Cap. 1, 2, 3. Gonzalem. in Tit. de Jur. patronat. Cap. Eum te decet. Greg. Tolosan. part. jur. Can. de Institut. l. 1. Tit. xxviii. cap. 11. Alteserr. in. iii. Decret. de Jur. Patronat. cap. 29. Sigism. Finkelthauum de Jur. patronat. cap. vi. n. 82.

(f) De Jur. Patronat. Cap. Quod autem. Et Gloss. in loc. Conf. Cap. Cum autem ib. Vid. Fr. Florent. de jur. patron. ad Cap. V. Alteserram. loc. cit. Sigism. Finkelthauum loc. cit.

(g) De Jur patronat. cap. Pastoralis Officii. Gloss. in cap. ad Voc. Robur obtinet.

if upon tryal He be found Worthy, (b) to be *Instituted* by the *Bishop* to his *Benefice*. I call it his *Right*, because so indeed it is: For this takes him out of the Power of his *Patron*, who from thenceforth has no more to do with Him; and gives him a full *possession* of, and as our Law speaks, a *Freehold* in², his *Parsonage*; which would otherwise be no more than a meer *Curacy*; subject to the will and pleasure, of the *Donor*.

It was for this cause that some (i) *Patrons* heretofore pretended to admit their *Clerks*, by their Own Authority, to their *Cures*; that so they might have power to *Remove* them at their *Will*. But as this Practice was utterly *disallow'd* by the *Church*, so was it evidently contrary to the nature of that *Trust* which was committed to Them; and at once encroach'd both upon the *Authority* of the *Bishop*, and upon the *Rights*, and *Liberties*, of the *Clergy*.

(3dly) As the *Bishops* themselves, whilst they Retained this Power in their Own Hands, were obliged first in *Conscience*, and then by the *Canons of the Church*, to bestow their *Benefices* freely and simply, without making any *Advantage* to *Themselves* by Them; so must all those who *derive* their *Right* of *Presentation* from them, and *Act* in their *Stead*, be accounted to lie under the *same Obligations*: And not attempt by any *Money*, *Bond*, *Promise*, *Release*, or Other *Contract*; *directly*, or *indirectly*; by *Themselves*, or by *Any Others*; to get any *Profit* to *themselves* by this *Right*.

I have already shewn what Care has been taken, from the first planting of the *Gospel*, to prevent all manner of *traffick* in Matters of this Nature; and I shall not repeat here, what I observed, to this purpose, but a little before. It will be more useful for the

(b) Anton. Augustin. Epit. Jur. Canon. lib. vi. Tit. 11. Cap. 8. Oportet ut Canonica Regula servata, nullus, absq; consensu Episcopi sui, cuilibet Presbytero Ecclesiam det. Quam si juste adeptus fuerit, hanc non nisi gravi Culpâ suâ, & coram Episcopo, Canonica Severitate amittat. [Ex Concil. Cabilon.] Cap. 9. Laici presbyteros non Ejiciant de Ecclesiis suis, neq; Constituant, sine Consensu Episcoporum suorum. [Ex Concil. Moguntin.] Cap. 10. Sine Auctoritate vel Consensu Episcoporum, Presbyteri in quibuscumque Ecclesiis nec Constituantur, nec Expellantur. Et si laici Clericos probabilis Vitæ, & doctrinæ, Episcopis Consecrandos, suisq; in Ecclesiis constituendos obtulerint, nullâ quâlibet Occasione rejiciant. [Ex Concil. Wormat.]—Cap. 12. Hanc habeant Auctoritatem Episcopi, ut in nullis Ecclesiis nec Constituantur Presbyteri, nec Expellantur, illis inconsultis, & non Consentientibus. [Ex Concil. Tribur.] This has been the constant Declaration, and Constitution of the Christian Church. See more ib. cap. 11. 15. 16. & lib. x. Tit. 10. & lib. xv. Tit. 6. 7. De Elect. cap. 43. Quisquis Electioni. Et Gonzal. Comm. in loc. De Privileg. v. cap. 3. §. In Ecclesiis. Compare Gregor. Tolosan. Partit. Jur. Canon. lib. 1. Tit. xxvii. de Beneficiis. Cap. 1. not. K. & Instit. Rei Benefic. cap. ix. Sigismund. Finkelshaus. de Jur. Patronat. cap. ii. n. 21.

(i) Vid. loc. sup. Citat. not. (b) And therefore the Capitulars of the French Kings joyn both these together, "Ut sine Auctoritate vel Consensu Episcoporum, Presbyteri in quibuscumque Ecclesiis nec Constituantur, nec Expellantur. For it was the latter the Patrons aimed at, in their Contention for the former. See Capitular. Ann. 816. c. 9. Comp. Capitular. lib. 1. n. 84. and 141. And Capit. Carol. Calvi. Aº. 816. n. 9. col. 212.

clearing of this Subject to take notice of some Instances of such *Agreements* as may seem to be the most *favourable*; and yet have been condemn'd, by the *Ecclesiastical Law*, as *Evil* and *Unwarrantable*.

A Man, in order to obtain a *Benefice*, Promises that if he be *Presented* to it, (*k*) He will *teach School* for Nothing, or Will *take care* of the *Sick* of the *Parish*, and *give* them *Physick*: If this be the *Condition* upon which He *takes* his *Presentation*, or is *Promised* by Him in order to the *procuring* of it, it is an *unlawful Contract*; and condemn'd by the *Canonists* as *Corrupt* and *Simoniacal*.

(*l*) A *Prelate* is Chosen by the *Greater Part* of the *Chapter*: Some few of the *Canons*, headed by a *busie* man, *Contradict* the *Election*. A *Friend*, with the *Consent* of the *Prelate* so Chosen, *gives* him *money* to desist from his *unjust Vexation* of Him. It was adjudged to be *Simoniacal*; and He was advised to *Resign* the *Dignity* to which he had been chosen.

(*m*) A Man freely gives his *Estate* (without any *Condition*) to endow a *Prebend* in a *Cathedral* or *Collegiate Church*; but with a *Secret Hope* and *Expectation* of being Chosen the *first Prebendary*; and so *Enjoying* the *Profits* of it during his *Life*. The *Canons* accept of the *Estate*, and *Chuse* Him *Prebendary* in consideration thereof; which Otherwise they would not have done. Tho' the *law* (which judges not of what is *Secret*;) cannot take hold of this, yet both Parties are censured as *Guilty* of *Simony* before *God*.

(*n*) A *Person* of *Quality* having a *Cause* depending in the *Court* of *Rome*, promised to *Present* a *Clergy Man* to a *Benefice* in his *Gift*, if He would *Promote* his *business* there. The *Promise* was judged to be *Simoniacal*, and the *Clerk* decreed to get Nothing by it.

I might add many Other *Instances* to shew, how strict the *Constitutions* of the *Church* have been in this particular. The sum of all is this; That *Benefices* should be bestowed *freely*, and *unconditionally*: And that no *Gift*, *Promise*, or *Consideration*, can either be de-

(*k*) *Gonzales* ad v. de *Simoniâ*. Cap. *Insinuatum est*. num. 2. Obj. Licet præstatur Obsequium temporale pro Beneficio Ecclesiastico Consequendo. — And then He instances in *Præbendis* & *Beneficiis* quæ Conferuntur cum Onere docendi *Grammaticam*, aut medendi *Infirmos*, quæ sunt Obsequia Temporalia, & Pretio Æstimabilia. Resp. num. 8. — Quoties tale Obsequium temporale, Annexum est Beneficio, non autem tempore Collationis in passionem deductum, nulla Committitur *Simonia*; quia tale Onus, etsi temporale, Annexum est Beneficio. At verò Si non est Annexum, sed tempore Electionis Pactum initum est, ut accipiat Beneficium, & teneatur *Grammaticam* docere, aut Curare *Infirmos*, *Simonia* Comittitur. Vid. ib.

(*l*) De *Simoniâ*. v. Cap. *Matthæus*.

(*m*) Ibid. Cap. *Tua nos*. Vid. *Gonzalem*. in loc. & *Alteserram* ibid.

(*n*) De *Simonia*. v. cap. *Cum Essent*. Vid. *Gloss.* in illud Cap. & decret. 1. qu. 1. Cap. *Sunt Nonnulli*. *Gloss.* Voce ab *Obsequio*. *Covarruv.* Var. *Resol.* lib. 1. cap. xx. § 3.

manded on the One side, or complied with on the Other, without intrenching upon the *Liberties* of the Church, and exposing the *Beneficiary* to the detestable *Sin* of *Simony*; and if He takes an *Oath*, (as commonly every such Person do's) against it at his *Institution*, to that of *Perjury* too. And well may that be looked upon as One of the most dangerous *Violations* of the *Rights of the Clergy*, which at once exposes them to the *Peril* of so black a *Guilt before God*; and, being proved, would *deprive* them of that very *Benefice*, for the sake of which they were induced to *Contract* it.

But, (4thly) As it is therefore the *Right* of the *Clergy* to be *Presented* freely to their *Benefices*; so is it also their *Right* to have (o) *them* fully, and intirely; without any *Burdens* laid upon, or *Diminution* made of, the *Profits* of *Them*.

THE *Right of Patronage* carries nothing with it but a *Right* of *Nominating* a fit *Person* to the *Bishop*, to be *admitted* to the *Benefice* in which any one has such an *Interest*. It conveys no *Title* to the *Revenues* of it; which are in the *Hands* of the *Bishop* during the time of the *Vacancy*; and to be order'd by him for the *Good* of the *Church*, and the *Interest* of the *future Incumbent*.

HENCE it is that the *Canon-Law* (p) forbids the very *Bishops* themselves (unless they have some *Special Privilege*, or *Prescription*, to warrant *Them*) to meddle with the *Goods* which were left by the *last Incumbent* upon his *Benefice*; or with the *Profits* that should arise in the time of the *Vacancy*; so as to turn either of them to their *Own Advantage*. And in the Case of the (q) *Archbishop of Milan*; who had given One of the *Dignities* of his *Church* to a certain *Person*, but retain'd Part of the *Profits* of it to Himself; *Pope Innocent the III^d*. determined these two points to our present purpose: (1st.) That for a *Bishop*, (much more for any Other *Patron*) to give a *Preferment*, upon condition that He Himself, or any Other for Him, should enjoy the *Benefits* which arose upon it during the *Vacancy*, was *Simony*. And (2dly.) That it is forbidden by the *Lateran Council* to any One, who bestows an *Ecclesiastical Benefice*, to reserve to himself any part of the *Profits* of it: And by another *Council*, that of *Tours*, provided; that *Ecclesiastical Benefices* should be disposed of without *Diminution*. It was, it seems, too common, in those days, for the *Patrons of Churches*, as well *Laymen* as *Others*; (but especi-

(o) Greg. Tolosan. Part. Jur. Canon. lib. i. Tit. xxviii. de Instit. cap. 15. Fevret. del Abus. liv. ii. c. 5. §. 1. 8. &c.

(p) De offic. Ordinari. Cap. fin. in Sexto. Vid. Anton. Aug. Epit. Jur. Canon. lib. xv. Tit. 12.—Alteferra in decret. lib. iii. Tit. 12.

(q) Decretal. lib. iii. Tit. 12.

ally for the (r) *Monks* who were very faulty in this particular) to keep the *Profits* of their *Churches* to their *Own Use*, and leave only some small *Pittance*, it may be a *XVth* part of the *Tithes*, to the *Person* who *supplied the Cure*; and that oftentimes *Precarious* too: Infomuch that *Learning* began to be utterly lost together with the *Encouragement* of it. To put a stop to this Excess, (s) the *Lateran Council* decreed, that notwithstanding any such *unwarrantable Custom* to the contrary, a competent provision should be made, in every *Church*, for the *Residing Curate*; and that no One should grant a *Pension* to another out of such *Profits*, to the *defrauding* of the *Church*, which ought to take care of its *Own Minister*.

It had indeed been customary (t) for the *Bishop*, at the *Foundation* or *Endowment* of any *Church*, to grant such a moderate *Pension* either to the *Patron*, or *Advocate*, of it; as might at once oblige them to take care of the *Rights* and *Privileges* of the *Church*, and yet not be enrdbusome to the *Incumbent* who was to pay it. But as this Allowance in time drew on those other *Abuses* which were here complained of; and by this, and some (u) Other *Decrees*, endeavoured to be abolish'd; so even those first burdens were not laid upon any *Church* either by the *Patron* himself, or even by the *Bishop*, as *Patron*, of it; but, by the One as *Founder*, or *Benefactor*, to the *Church*, and disposing of his *Endowment* under such *restraints* as He then thought good to make; by the Other as *Bishop*, in the Exercise of His *Episcopal Authority*; and as, at the beginning, the whole disposal of the *Churches Revenues* was look'd upon, of *Right*, to belong to Them.

I conclude therefore, that as no *Patron* ought to exact, or receive, any *Promise* or *Reward*, for his *Presentation*, so neither may He lay any *Burden* upon the *Benefice* to which he *presents*; or make any *bargain* for his *Own Tithes*, or for *Those* of the *Parish*; to have either the One, or the Other, at such a *certain Rate*; or otherwise to do any thing by which the *Revenues* of the *Church* may, in any wise, be *Encumbered*, or *Diminished*. For nothing of this nature falls within the *Right* of *Patronage*; nor can the *Bishops* themselves, where They are *Patrons*, do any thing of this kind as Such, any more than a *Lay Patron* may do it. But,

(sthly) And Lastly; As every *Parochial Cure*, where there is a sufficient Maintenance for such a One, ought to have its proper *Mi-*

(r) Decret. i. de Supplend. Neglig. Prælat. cap. Sicut Nobis. See Gonzales in loc.

(s) Decret. iii. de Præbend. & Dignit. cap. Extirpanda. Vid. Comment. Gonzalis. in Cap. illud.

(t) De jure patronat. iii. Cap. Præterea. & de Censibus. cap. Significavit. ibid. Cap. Gravis, Fr. Floren. in iii. Decret. de jure patronat. ad Capp. vii. & xix. & ad Cap. xxiii. St. gismund Finkelthaus de jur. Patronat. cap. vi. n. 137. Francisc. Leo. Prax. For. Eccles. c. xxii. n. 40. 41.

(u) Panormit. de Pactis. Cap. Cum Clerici.

nister, and not be served only by some *Temporary Curate*; so is it the Right of every One who is *Presented* to any *Benefice*, to be *Canonically Invested* in it, and *Intituled* to it; and not be lyable to be *Deprived* of it but for such *Causes*, and after such a *Manner*, as the *Laws* of the *Church* have *Ordained*. And therefore it is the *Bishop's* Office as to *Admit*, so likewise to *Dismiss* his *Clerks*: (x) Who have no *Power Themselves* to *depart* from their *Cures* at their *Own Pleasure*; much less ought They to be *Turn'd out of Them* at the *Will* of any *Others*.

Now this being at once the *Right* both of the *Bishop*, and the *Beneficiary*; it is evident that without enquiring how far it may be lawful, upon the grounds before mentioned, for any *Patron* to *Demand*, or any *Clergy-Man* to *Give*, a *Bond of Resignation* (which by the *Canons* of the *Church*, before recited, it is without all controversy *Unlawful for Either to Do*;) this One Consideration may suffice to prove the Irregularity of it; namely, That by every such *Bond* the *Right* of the *Bishop* is *Invasion*: (y) Who by *Ordaining* his *Clerk*, as he is supposed to do; and by *Admitting*, and *Instituting* of Him,

(x) See before in these notes, pag. 17. (h) Add. Capicular. lib. vi. n. 200.—Et lib. vii. n. 245. Et Statut. S. Bonifacii apud D' Acherium. Tom. ix. p. 63. n. 1. Ex Concil. Arelat. Ut nullus Presbyter creditam sibi Ecclesiam, sine Consensu Episcopi derelinquat, & laicorum suasionem ad aliam transeat. & n. 6. Ex Conc. Moguntin. Ut Laici Presbyteros non Ejiciant de Ecclesiis, nec mittere præsumant, sine Consensu Episcoporum suorum. & iii. Decret. de Renuntiatione. Cap. 4. Admonet. Alexander the iiii. determines according to the same Rules; Universis personis tui Episcopatus (sc. Torniacensis) sub distinctione prohibens, ne Ecclesias tuæ diæcesis, ad Ordinationem tuam pertinentes, absq; assensu tuo intrare audeant, aut detinere, aut Te Dimittere inconsulto. Vid. Commentar. Gonzal. in illud Cap. ubi hanc Conclusionem explicat, & ruetur; Sc. "Beneficiatus sine Licentiâ sui Episcopi, Beneficio Renuntiare non potest. Duarenus de Benefic. lib. viii. cap. 2.—Sed Antistitis Superioris Consensus atq; Autoritas accedere debet; nec licet Veniâ non impetratâ Ecclesiam sibi Commissam deferere.—D' Artis de Beneficiis. Sect. x. cap. 3.—"Renuntiare neminem posse Beneficio, sine Superioris Autoritate dicitur in cap. Admonet. Extr. de Renunt. &c.—Et qui Renuntiaverit nihil Agit, priusquam Superior Renuntiationem Approbaverit; in Cujus potestate est Admittere, vel non Admittere, Renuntiationem. This was founded upon the Primitive Discipline of the Church, which forbade not only a Clergy-Man to leave the Church to which He had been Ordain'd; but one Bishop to promote, or otherwise receive, the Clerk of another, without his Consent. See Canon. Concil. Nicæn. xvi. Collect. Can. Eccles. African. apud Bevereg. Can. lviii. lix. Comment. Græc. in Canon. Prædict. Panormit. in 1 Decret. cap. Admonet. & Cap. Super Hos. n. 41. Covarruvias. Var. Resol. lib. 1. cap. 5. n. 6. Gregor. Tolosan. Part. Jur. Can lib. 1. Tit. xxviii. cap. 8. tit. e.—Alteserr. in Decret. de Renuntiatione. cap. viii. Quod in dubiis.—Fevret. Trait. de l' Abus. liv. ii. chap. vi. §. 3. Sigismund Finkelthaus De Jur. Patronat. cap. ii. n. 24.

(y) Fr. Florens. ad lib. 1. Decret. Tit. ix. pag. 249. Et de jur. Patronat. pag. 97. Gonzal. in 1. de Renuntiat. Cap. Admonet. § 6.—Nam cum Clericus ad Titulum Beneficii Ordinatus, ascriptus & mancipatus sit Certæ Ecclesiæ—in eâ debet perpetuò manere. See other Reasons ibid. D' Artis de Benefic. loc. cit. Panormitan. in 1 Decret. Cap. Quod in dubiis.

and receiving an Oath of Canonical Obedience from Him, which He actually do's Do, either by *Himself*, or his *Deputy*; acquires such a *Right to his Service*; that He has from thenceforth no power to dispose of *Himself*, without the *Consent* of his *Ordinary*; much less ought it to be in the power of any Other, to dispose of Him. And I shall leave it to the Conscience of any *Clergy-Man* who considers what *Interest* the *Bishop*, by *Institution*, gains in Him; and to what duty his *Canonical Oath* obliges him; How to reconcile two such contrary *Acts* as the *Giving* of a *Bond* to *Resign* his *Benefice* whenever the *Patron* pleases; and *Swearing* to his *Bishop* such a *Canonical Obedience*, as that, in consequence thereof, He can neither effectually leave his *Benefice*, nor ought so much as to *Attempt* it, without His *Licence* and *Consent*.

NOR will the pretence of any *Good End*, in point of Conscience, secure either the One in Requiring, or the Other in Consenting to such a Contract. Suppose the *Obligation* should not be *General*, to *Resign within a certain time*, whenever the *Patron* shall give notice; but *Limited* to the most favourable case that can be desired: As for the benefit of a *Minor* for whom the *Church* is designed; or to oblige an *Incumbent* not to accept of any Other *Benefice* with *Cure of Souls*; or to *Reside continually* upon his *Living*; (Some of the fairest *Conditions* that can be imagined :) Yet still, This is an *Obligation* required by One who has no *Right* to demand it; but, on the Contrary, ought to *Present* his *Clerk* freely, without any *Promise*, or *Contract*, whatsoever: It is an *Obligation* enter'd into by One who has no *Power* to Oblige *Himself* in that particular; but is by his *Institution*, and *Oath*, so ty'd to his *Bishop*, that He cannot *Give up* his *Benefice* whenever He pleases, nor quit the *Service* to which He is admitted: In short; It is an *Obligation* contrary to the *Canons* of the *Church*, and that *Obedience* which He is bound to Pay to Them. If the *Bishop* has nevertheless *Power* to *Refuse* his *Resignation*, as I conceive He has, (nor do I think that any (z) *Superior Ordinary* in such a Case

(z) See Gloss. in 1. de Renuntiatione. Cap. Admonet. Voc. Te dimittere Inconsulto. Where shewing that the Prelate, or Parson, of one Church cannot be Elected to another; It gives this Reason, *Quoniam Prælati ille vel Clericus non habet facultatem Recedendi ab Ecclesiâ suâ sine licentiâ Episcopi sui. Unde ejus Consensus illegitimus est.* But what then must be done in such a Case? Why, He must be Postulated; Requested; and the Bishop's Consent ask'd. And what if the Bishop will not consent? The Gloss. answers: *Si Episcopus malitiose Eum non vult concedere, cogendus est per Superiorem.* Yet others thought such a One might be Elected; but still, *imploranda est Licentia sui Episcopi*: Who, *Si denegaret Eum, Compelleretur per Superiorem, si malitiose hoc faceret.* But what if the Bishop should not deny his Consent out of Malice, but for some good Reason? Why then, *Si iusta causa subsistat quare Episcopus hoc denegavit*, says the Gloss upon the like Occasion, *tunc Papa* (for by the

Case would force him to accept of it) it is a sufficient reason to justify his Refusal, that such a (a) *Bond*, was given in a matter wherein *his Authority* was so nearly concern'd, without *his Consent*, or *Approbation*. If He has not, 'tis plain, that His *Authority*, confirm'd by the *Laws* of the *Church*; and a *continual Usage* beyond all Memory, in consequence of Those *laws*, viz. of *Allowing*, or not, the *Resignations* of his *Clergy*, and that subject to no Other Judgment but only of his *Ecclesiastical Superior*; is by this *Practice* utterly destroy'd: And then I am sure both the *Patron* must be Confess'd to *abuse* the *Trust* committed to Him; by Employing it to the *detriment* of that *Authority* from which it was *Originally* derived; and the *Beneficiary* be look'd upon to make a very light account of his *Oath*, to *Tiend Canonical Obedience to his Bishop*; and to do, WHAT IN HIM LIES, to *maintain the Rights and Privileges of his See*; when, at the same time, by such an *Act* as this, He has in truth done WHAT IN HIM LIES rather to *withdraw his Obedience* from His *Bishop*, and to subvert One of the *main Rights*, and *Privileges*, of his *See*.

I shall close up this whole Subject with a *Case* out of the *Canon Law*, and the *Rules* upon which it depends, for the better settling of this last Point.

A Person being chosen (b) *Bishop of Syracuse*, who had a Wife and Children; the *Pope* before He *Confirm'd* Him, oblig'd him to Exhibit an Inventory of his *Estate*, and to give *Security* that He would not employ any Part of the *Churches Patrimony* to the *Benefit* of his *Own Family*. (c) Another being chosen *Bishop of Catana*, and his *Election* Opposed by some, who were supposed to have wasted the *Churches Goods*, unless He would engage himself not to call

the Old Canon Law He was the Superior to whom the Appeal lay) non Concederet, nec Episcopum compelleret ad dandum Licentiam. The law I conceive, is the same still; only the Appeal now lies to the *Archbishop*, and his *Court*, instead of the *Pope's* and his *Consistory*.

(a) Among the *Defects* which render a *Renuntiation* void by the *Ecclesiastical Law* these are some of the Principal, *Vis*, *Metus*, *Oppressio*, *Interventus pecuniæ*, *Promissio*, *Extr. de Renunt. Cap. Super hoc*; besides the General Circumstance, of *Mala Artes* used in the procuring of it: And I doubt scarce any One of these is wholly wanting in a *Resignation* made upon the account of a *Penal Bond* given to that purpose. *D' Artis. de Benefic. Sect. x. cap. 3.*—But especially if we consider that the *Canonists* tell us that *Metus* may be either in *Personâ Renuntiantis*, or in *ejus Patrimonia*; as if otherwise He shall sustain some loss in his *Estate*, if He do's not *Resign*; and either of these by the *Ecclesiastical Law* make a *Renuntiation* void, *ib. See Decret. 1. de iis quæ Vi Metusve causâ sunt, cap. 2. Abbas. Panormit. in dist. Cap. Gonzal. Comm. in Cap. 2. 3. 4. ibid.* So that upon all these accounts, as well as the *Turpitude* of the *Act*, and the *Usurpation* hereby made upon the *Bishop's Authority*, the *Ordinary* may, by the *Ecclesiastical Law*, warrantably refuse such a *Resignation*, and maintain his *Refusal* of it. *Comp. Panormitan. in 1. Decret. cap. super hoc. n. 11. 12. 34.*

(b) *Decret. Cap. De Syracusana. Dist. xxviii.*

(c) *Caus. viii. Qu. 3. cap. Talia.*

them to any account for what they had done; the *Pope* appointed him to Come to Him for *Confirmation*, provided He had neither *Given* any such *Security* as they desired, nor *promised* to *Indemnify* them for what they had done in *Embezzling* the *Church's Goods*. In the former instance the *Pope* requires an *Oath* for the *Security* of the *Church's Goods*; In the Latter He forbids any *Promise* to be made, or *Security* to be given, with Relation to them, as *Corrupt* and *Simoniacal*.

THIS is the *Case*, and the *Reconciliation* of these two seemingly opposite Resolutions, is thus rightly made by the *Canonists*. What a *Person* is Obligated to by virtue of the *Office* which He undertakes, and would otherwise have been bound in Conscience to Do; that He may also *Promise*, or *Swear*, without the imputation of *Simony*, to *Perform*. And that was the *Case* in the *first Instance*. But if a *new thing* be required, which is not annex'd to the *Office*, nor ought to be Done, as in the *latter instance*; so that a Man Obliges Himself to somewhat which He would not otherwise have been bound to do; (tho' what He *Promises*, or *Swears*, or otherwise Obliges himself to, should be in itself never so *Innocent*, or even *Commendable*) yet is every such *Promise*, or *Contract*, *Simoniacal*: As in the *Case* of *Teaching School*, *Taking care of the Sick*, and the like; I before observed it to be.

SUCH has been the *Resolution* of the *Canonists* in this matter; and the same may be said as to the *business* of these *Bonds*. If the Conditions of them be particularly express'd; and they contain nothing but what every *Clerk*, in consequence of his *Institution* to the *Benefice* to which he is *Presented*, is by the *Canons* of the *Church*, and the nature of His *Office*, Obligated to do: If, whether He gave any such *Bond*, or no, He would have been equally bound in point of *Conscience*; so that the *Bond* is no more but a *secondary Obligation* upon Him to Do that, which it would otherwise have been His *Duty* to have done: In short; If the *Bond* which is given requires nothing

(c) I shall set it down in the Words of *Gonzales* Comment. ad Extr. v. de *Simoniâ* Cap. *Insinuatum* est. §. 8. Discrimen constituendum est inter eam Cautionem ad quam præstandam tenetur Eligendus (or præsentandus) & inter illam ad quam non tenetur. Primo namq; Casu, etiamsi cum jurejurando præstet Cautionem illam, non Committitur *Simonia*; quia Talis Cautio annexa est ipsi Electioni; & quotiens actus per se Bonus est, non efficitur malus, ex modo efficiendi. At verò Si Cautio Præstari solita non est, nec ipsi Electioni (or præsentationi) annexa jam reperitur; Præstari non potest pro Beneficio assequendo. Quomodo etiam Respondendum est iis, quæ expendebamus, de Beneficio alicui collato cum Onere docendi Grammaticam, aut Curandi Infirmos. Nam, quoties tale obsequium temporale annexum est Beneficio, non autem, tempore Collationis, in Pensionem deductum, nulla Committitur *Simonia*: At verò si non est annexum, sed tempore Electionis Pactum initum est, ut accipiat Beneficium, & teneatur Grammaticam docere, aut Curare Infirmos, *Simonia Committitur*. See his Authorities for this Opinion. ib.

but what the *Patron* has a *just Right* to *require*, and the *Clerk* may, without Injury to the *Bishop* or his *Church*, engage to *perform*; let it be granted that *those* who give such *Bonds* as these, do nothing amiss. But if by this means the *Patron* Usurps any *undue Authority* over his *Clerk*; such as none but the *Bishop*, nor even the *Bishop* Himself upon such terms, has any right to: If He *restrains* his *Liberty* in such Instances wherein the *discipline of the Church* has not thought fit to *restrain* it: If, under the pretence of a *Good Intention*, the *Patron* may not only be enabled, but may at the bottom have design'd to keep his *Clerk* in *Awe*; and to put his *Bond* in *Execution*, or not, as He shall *servily comply*, or *not*, with him in his *Humours* or *Interests*: If, lastly, the allowing of *any Bonds at all*, tho' never so *specious*, may be likely to give Countenance to Others of a more *pernicious nature*; may encourage *Patrons* to *exact* them, and *Clergy-men* to give them; then, I think, *those* who have been *unwarily ensnared* into such a *Compliance*, but much more *those* who have *ensnared them*, ought heartily to *Repent* of what they have done; and the rest of the *Clergy* to be caution'd, from their Examples, *not to betray their Own Liberties*; but to consider this, that if they stand their ground, their *Patrons* cannot hurt them: They may require such *Bonds* if they please; but if you, my *Brethren*, are but constant, and resolved, not to Give them, they must *dispose* of their *Benefices* without them; Or, if they do not, they will fall to those, who I trust, and am persuaded, will *freely*, and without any *such ties*, *Col-late* to them.

II.

AND thus have I consider'd these *Rights* of the *Clergy*, as they have been settled by the *Ancient Canons*, and *Usage*, of the *Church*; and by the *latter Decisions of Popes, and Councils, ABROAD*: I come now to enquire how they agree with *OUR OWN Provincial Constitutions*, and the *Laws* of our *Church* and *Realm*. And if upon the Examination it shall appear, that the Case has been the same with *Us*, as it has been with all *Other Churches*, in these particulars; If our *Canons*, both before, and since the *Reformation*, agree to intitule Our *Parochial Clergy* to the same *Privileges*, which their *Brethren* in all other *Christian States, and Countries*, have enjoy'd; and that neither our *Statute*, nor *Common Law*, is at all contrary thereunto; We must then conclude, that *they* have a *just Right* and *Title* to them; and neither ought to do any thing contrary to their *Own Liberties*, in any of these matters, *Themselves*, nor should be required by any *others* to do it.

E

THAT

THAT Our Bishops at the beginning, as well as those Abroad, had the whole Care of their *Dioceses* in their Own hands; and supplied them by their Own *Presbyters*, where they could not be present. *Themselves*; is a thing so certain, that those who have made the most exact Enquiries into these matters, doubt not to tell us, (d) that for the first, Six or seven hundred Years, there were no such things as either *Parish-Churches*, properly so called, or *settled Priests* to officiate in them. The Great Lords who, in those times, had almost all the Lands of the Realm in their own hands, as they saw occasion, built places for divine worship, and made some kind of Provision for those who perform'd it: But they were like *Chappels of Ease* to the Cathedral, or Mother Church; They were neither confined to any certain District, nor had any fix'd Pastors intitled to them; but were the common Places of Worship for all the Vassals and Tenants of those who built them; and were supplied by *Presbyters* sent Occasionally by the Bishop, to preach and officiate in them.

It is commonly supposed, that about the latter end of the VIIth Century, (e) *Theodore* Archbishop of *Canterbury* began, by his Care, not only to procure Churches to be founded up and down in the Country, but to set out the Bounds of *Parishes*; and caused it to be Establish'd that if any Persons would erect any New Churches upon their Own Lands, they should have the perpetual Patronage of them. And, it must be confess'd that, about this time, some Churches began to be built by the Great Lords upon their Estates; who probably did thereby gain to themselves the Nomination of a fit Person to Minister in them. But yet it do's not appear, that any considerable advance was hitherto made, either in the Erection, or Endowment, of such kind of Churches: And whatever was done of this kind, it was still done with the Consent of the Bishop of the Diocese; who both (f) ap-

(d) See Mr. Wharton's *Defence of Pluralities*, Pag. 70, &c. Dr. Inet's *Hist. of the Engl. Church*, Chap. xvii. §. 3. Comp. their References to this purpose from *Bede's Hist. Eccles. lib. iii. cap. 26. & lib. iv. cap. 27.*

(e) See Mr. Wheelock's Note on *Bede's Eccles. Hist. lib. v. cap. 8.* Excirabat *Theodorus* Archiepiscopus fidelium devotionem & voluntatem, in quarumlibet Provinciarum Civitatibus, necnon Villis, Ecclesias fabricandi, Parochias distinguendi; Assensus regios procurando, ut siqui sufficientes essent, & ad Dei honorem pro Voto haberent super proprium fundum Ecclesias construere, Earundem perpetuo PATRONATU gauderent. Ex libr. MS. Aul. Trinit. Cant.

(f) *Concil. Calchuth. circ. Ann. 787.* where it Ordains *Can. the iii^d.* Ut unusquisq; Episcopus parochiam suam omni anno semel circumeat, diligenter Conventicula per loca congrua Constituendo, quo cuncti convenire possint ad audiendum Verbum Dei. Et Synod. apud *Celichyth. Ann. 816. cap. ii.* Ubi Ecclesia ædificatur, à propriæ diocesis Episcopo Sanctificetur. And that this had been the ancient discipline of the Church of England, the Instances of this which *Bede* reports, above a hundred years before, may suffice to shew. *Eccles. Hist. lib. v. capp. 4. 5.*

pointed the Places where these Churches should be built, and Consecrated them when they were erected. This was the stated Law of our Church as to this matter; (g) which suffer'd no one to Found either a Church, or Chappel, in any Diocese, without the special License of the Bishop first obtained for that purpose; nor being built, left it in the Power of the Founder, but immediately subjected it to the Bishop's Jurisdiction.

BUT our Bishops did yet more: They not only gave leave for Churches to be Built, and Consecrated them when they were built; but they assigned the Bounds of the several Districts, or Parishes, within which the Presbyter of every such Church should officiate. Of this we have express mention made in the (b) Council of Cloveshoe, Anno. 747: And what the Effect of this was we may observe in the (i) Synod of Celichyth about seventy Years after; where these Priests are forbidden to Do any thing without the Præcinct assigned them by their Bishops; except in the two Cases of Baptizing Children in danger of death, and of Visiting the Sick; in which they were allow'd, or rather required, to do their duty, without regard to any such Division.

FROM this time we find such orders establish'd, as necessarily suppose a settled Ministry in their respective Parishes (k). * " That no

(g) Synod. Exon. Ann. 1287. Cap. de Ecclesiis—Construendis: Which speaks of this as the Law of the Realm, no less than of the Church: Quoniam Ecclesiarum Ordinatio, à quocumq; Constructæ fuerint, non in Construentis potestate, sed loci Diocesani consistere dinoscitur, prout Utriusq; juris sancta & salubris decrevit Autoritas; Nec liceat Cuiquam Ecclesiam, vel Capellam, de novo construere, absq; Episcopi sui Licentiâ speciali: Præcipimus, &c. And this the Pope asserts to have been the Ancient Custom: Epist. Innocent III. Pag. 208. -- b. -- Edit Baluz.

(b) Concil. Cloveshoe. sub Cuthberto: Can. ix. Ut Presbyteri per loca & regiones Laicorum quæ sibi ab Episcopis provinciæ insinuata & juncta sunt, Evangelicæ, atq; Apostolicæ Prædicationis Officium, Baptizando, & Docendo, ac Visitando, sub legitimo ritu, ac diligenti curâ, Studeant explere. See before, Note c.

(i) Concil. apud Celichyth. Ann. 816. Cap. xi. Ut nec Episcopi, nec Presbyteri, alterius Parochiam aut munus invadant. The former part relates to Bishops: In the latter, Presbyteris Præcipimus, ut nullus majora Negotia ad se desideret, quàm à proprio Episcopo concedatur, nisi in solo Baptismo, & Ægritudinæ Infirmorum, tantum. Vid. Pl.

(k) Vid. Excerpta Egberti circ. Ann. 750. Can. li. Ut nullus absolutè ordinetur, & sine pronuntiatione loci ad quem ordinatur. — Concil. Calchuth. Ann. 787. Ut omni Anno in Synodalibus Conventibus, ab Episcopis, Singularum Ecclesiarum Presbyteri, qui populum erudire debent, de ipsâ fide diligentissimè examinentur. — Excerpta. Egbert. Can. xxiii. Ut sine Autoritate, vel Consensu Episcoporum, Presbyteri in quibuscumq; Ecclesiis, nec constituentur, nec expellantur: Conf. Can. lvi. — lb. Can. xxv. Unicuiq; Ecclesiæ una Mansa integra absq; alio servitio attribuat, &c. — Can. xiii. Ut nullus Presbyter à Sede propriâ Sanctæ Ecclesiæ sub cujus titulo Ordinatus fuit, ad alienam pergat Ecclesiam; Sed ibidem devotus usque ad vitæ permaneat exitum.

“ one should be *Ordained at large*, without mention of the *Place* to which He was *Ordained*: * That the *Bishops* should *Examine* the *Priests* of every *Church*, concerning the *Right Faith*: * That *Presbyters* should neither be *placed in*, nor *put out* of any *Church*, without the *Bishop's consent*: * That one entire *Manse* should be *appropriated* to every *Church*; and the *Priests* not do any *Service* for their *Tenths*, *Offerings*, *Houses*, *Gardens*, or the *Manse* so *appropriated* to them: * That no *Priest* should *leave* the *Church* to which He was *Ordained* to *Go* to *Another*; with many *Others* of the like kind. All which, as they plainly shew such *Presbyters* to have been *fix'd* in their several *Churches*, so the most of them prove the *Original Right* of the *Bishop* who placed them there: And that whatever *Interest* the *Patrons*, who *founded*, or *endow'd*, such *Churches*, might thereby gain in the *Nomination* of those who were to *Officiate* in them; yet it was all by the *Allowance* and *Consent* of the *Bishop*, in whose *Diocese* they lay; and by whom alone they could be either *Admitted* upon their *Nomination*; or, being admitted, be *Dismiss'd* from the *Cures* which they had *Undertaken*. Inſomuch that in the (1) *Council of Westminster*, Anno. 1138. it was *Decreed*; “ That no such *Priest* should receive a *Church*, or any other *Ecclesiastical Benefice*, “ from the *Hand* of a *Lay-man*, but by *Institution* of the *Bishop*; which has accordingly continued to be the *ſtated Law* of our *Church* to this day.

IT is therefore plain, that the *Right of Patronage* was, *Originally*, in *Our Bishops*, as it was in *All others*; and from them *derived* to *Other Patrons* for the *Benefit of Religion*, and the more to *encourage* them to *build Parochial Churches*; to *Endow*, and *Protect* them: And that, by consequence, those who now enjoy the *Patronage* of them, must do it with the ſame *Limitations*, that I have before ſhewn *All other Patrons* did; and be ſubject to the ſame *Rules*, and *Measures*, in their *diſpoſal* of them.

AND accordingly, 1^{ſt}, It has been the allow'd *Right* both of the *Clergy*, and *People*, with *Us*, as with *those Abroad*, to have their *Parochial Churches* provided for within ſome competent time after they become vacant; for the better *Exercise* of *Religion*, and to prevent *those damages* that may accrue to the *Building*, the *Revenues*, the *Ornaments* of the *Church*, and the *Dues* of the *Minister*; by a longer delay of it.

WHAT that time is which the *Canon-Law* allows every *Patron* to

(1) *Concil. Westminster. Cap. 5. Nullus omnino de manu Laici Ecclesiam, seu quacunq; Ecclesiastica Beneficia, accipiat.* See below not. S. pag. 30.

chuse a fit and worthy *Clerk* for his *Church*, I have before observ-
ed. It distinguishes between the *Lay-patron*, and the *Ecclesiastical*;
and, for the Reasons there recounted, hath determined the former to
have but *Four*, the latter *Six Months*, to *Nominate* a *Clerk* to the
Bishop. And this Proportion our (m) *Own Provincial Constitutions*
seem to have favour'd: They refer us for the Time within which a
Lapse should incur to the *Lateran-Council*; and *Lynwood* takes care,
in his *Commentary* upon them, to tell us, that it was *Six Months*
where a *Clergy-man* was *Patron*, and *Four* where a *Lay-man*. But
our (n) *Common-Law*, even then, went against it; And according to
the *Customs* of *Normandy*, upon which it was in good measure
founded, allow'd to either sort the same time, viz. *Six Months*.

BUT the *Delay* of filling a *Vacant Church* may proceed from
other Causes, besides the *Neglect* of the *Patron* to present to it: The
Bishop may defer the *Institution*, or the *Archdeacon* the *Induction*; and
this may turn no less to the *Detriment* of the *Clergy*, than if the
Patron had been in fault. And therefore to prevent this also, it was
provided, (o) that No *Bishop* should delay the *Institution* of the *Per-
son presented* to Him, if he were fit to be admitted, above *Two
Months*, nor any *Archdeacon* his *Induction* beyond the like term; un-
less for some reasonable Cause to be assigned before their several Su-
periors, when they should be called to account for it. This Propor-
tion continued in force till the beginning of the last Century: When
to put an end to all delays in a matter of so much concern to the In-
terest both of the *Clergy*, and *People*, (p) the time was reduced to
Eight and Twenty Days, within which, if the *Bishop* neglects, or
refuses, to admit the *Person* who is *Presented* to Him, He shall, by
a *process* out of the *Archbishop's Court*, be obliged to shew Cause
why He delays his *Institution*; and for default of doing it, the *Clerk*
shall, by Order of that *Court*, be admitted by the *Archbishop's Offi-
cial*; and the *Bishop*, for that time, lose his *Right* of *Admission* for
his *Neglect*.

AND this brings me to the next Privilege of the *Parochial Clergy*
in this particular; which is,

(m) Apud Lynwode. Cap. Cum secundum Apostolum, De jure Patronat. Vid. not. Lyn-
wode. Voce devolvatur. Scil. per lapsum Sex Mensium in Patronatu Clerici. Alias quatu-
or Mensium ubi Laicus est Patronus.

(n) Dr. and Student par. ii chap. 31. Registr. fol. 42. b. Coutumier de Normandie. De
Patronage del' Eglise. c. cix. Si doit le'n scavoir, que se une eglise est vacante per fix
moys apres ce que la mort de la personne est sceue communement, l'Evesque du lieu la
pourra donner à qui il voudra, si que le patron ne le pourra contredire. It makes no
distinction of One Patron, or Another.

(o) De Instit. & Commend. cap. Cum secundum Apostolum.

(p) Can. 1604. Can. xcvi.

2dly, To be *Instituted* by their proper *Bishop* into the *Churches* to which they are *presented*. This was early provided for in *Our Church*, as well as in *Those Abroad*: (q) The *Excerptions* of *Egbert* carry us back as far as the time of *Theodore Bishop of Canterbury* for a *Constitution* to this purpose. In the (r) *Synod of Westminster*, Ann. 1138. The *Canon* was exprefs, "*Nullus omnino de manu laici Eccle-
siam, seu quæcunq; Ecclesiastica Beneficia, accipiat.*" It was again establish'd by the (s) *Council of London*, Anno. 1200. And for the benefit of it to the *Parochial Clergy*, the same *Canon* sufficiently speaks it; by forbidding Any, even the *Religious* themselves, to whom the *Right* of any *Churches* belonged, to Remove those who had been once *Instituted* into them, without the *Bishop's Knowledge and Authority*.

'TIS true there are some *Benefices* in which this *Right* admits of an *Exception*; (t) and to which the *Patrons* do themselves *Collate* their *Own Clerks*, without any *Institution* from the *Bishop*. (u) It is the *Prerogative* of the *Crown*, that the *Prince* may either himself *Found* a *Church*, and *Exempt* it from the *Jurisdiction* of the *Ordinary*; or give leave to the *Subject* to do it. And several of these kind of *Donatives* there are among us, in which no *Institution* is required; but, at the most, a *Licence* from the *Bishop* to serve the *Cure*. But as these are *Exceptions* to the *General Rule*, so the *Consequence* shews the *Inconvenience* the *Clergy-man* is expos'd to thereby; viz. That He who has such a *Church* is, for want of being *Instituted* by the *Bishop*, in the *Power* of the *Patron*; (x) Is visited by him, or by some

Aut-

(q) Excerpt. Egberti. 23. Ut sine autoritate vel consensu Episcoporum, Presbyteri in quibullibet Ecclesiis, nec Constituantur, nec Expellantur. This n. 56. He refers to Theodore. 1 Spelm. Concil. p. 264.

(r) Concil. Westm. cap. v. supr. Citat.

(s) Concil. Lond. cap. ult. Tit. Ne aliquis sine Episcopali Autoritate, Ecclesiastica Beneficia de manu laicâ recipiat. The Canon requires the *Templars & Hospitalars*, (who had been very faulty in this respect) and all other *Religious*, that In *Ecclesiis suis* — instituendos *Presbyteros* *Episcopis* *Præsentent*; ut eis quidem de plebis curâ respondeant, ipsis vero pro rebus temporalibus rationem exhibeant *Competentem*. *Institutos autem, inconsultis Episcopis, non audeant remove.* Vid. pl. And that this was also the *Law* of the *Realm*; appears, by the *Artic. Cleri*, c. 13. which not only constitute the *Bishop* Judge of the *Fitness* of a *Person* for a *Benefice* for the future, but declare that He had been so reputed in all times preceding.

(t) Vid. *Lynwode* in lib. iii. De *Cohabit. Cleric. & Mulier.* cap. Ut *Clericalis Ordinis.* Voc. *Beneficiati*.

(u) See *Hughes's Parson's-Law*, Chap. xix. xxviii. *Degge. Parl. Councell.* par. I. chap. xiii. *Coke* 1 *Instit.* p. 344. Tho' others think there must be a *Royal Foundation*, or else a mere *Licence* will not do.

(x) *Lynwode* loc. cit. Non habent *Institutionem* ab *Episcopo*, nec *Inductionem* ipsius mandato; sed omnia expediuntur per ipsum *Regem*, & alios viros temporales, de eorum mandato.

Authority derived from him; and has no *benefit* of the *Bishop's Jurisdiction* to protect him in the *Church*, to which He was not admitted by him.

How our *Princes* came to enjoy such a *Privilege*; Whether it were at first indulged them by *Papal Authority*, (y) and by long prescribed *Custom Confirm'd* to them; Or whether it belong'd to them of *Right*, as *Supreme Lords* of all the *Fees* out of which these *Foundations* were *Originally Endow'd*; as (z) our *Canonists* themselves, before the *Reformation*, were not agreed, so it is not at all material for Us to enquire. Nor shall I dispute whether, for want of *Institution*, they may properly be called (a) *Benefices*, or be consider'd in *Law* as such. This is certain, That by their *Exemption* from the *Bishop's Jurisdiction*, the *Incumbents* of them are not only deprived of that *Institution* which of *Common-Right* they ought to have, but lose his *Protection* too; and are wholly subject to the *Authority* of *Those* who have the *Donation* of Them. But this, as it ought not, so neither do's it in any wise prejudice the general Claim and *Privilege* of the *Parochial Clergy*: Who being *Presented* to their *Benefices* by their proper *Patrons*, have a *Right* to be *Admitted* to them by the *Bishop*; and so become from thenceforth free from all farther *Dependance* upon those by whom they were *Presented*.

BUT, 3dly, As the *Patron*, after He has once *presented* his *Clerk* to the *Bishop*, and *Institution* is thereupon granted to Him, has no more *Authority* over Him, but leaves him, from thenceforth, to the *Care* and *Conduct* of his *Ordinary*; so ought He to bestow his *Pre-*

mandato. Of one of these, the *Deanry of St. Martins*, he says, — In ejus *Collatione*, five *presentatione*, non est certum tempus limitatum, nec contra *Patronum* currit devolutio. *Visitatur* etiam, ut pluries, per merè laicum, quia per *Regis Cancellarium*: And for our *Common Law* in this Case, see *Yelverton in Fairchild's Case*, p. 60. 62. And the same in short in *More's Rep.* p. 765. See *Bp. Still. of Bonds of Resignat.* p. 68.

(y) *Extra. De Consuetudine. cap. Cum inter.* Vid. *Gonzalem in loc.* *Bp. Stillingfleet's Eccles. Cas.* vol. ii. p. 120, 121. As to the *King's free Chappels* shews their *Exemption* to have proceeded from *Papal Indulgence*.

(z) *Lynwode* loc. cit. thus speaks of this matter; that the *Laws* confirm'd this *Power* to our *Princes*, *Quibus cavetur*, says He, *quod Reges Angliæ licet non de jure Scripto, tamen de Consuetudine legitimâ præscriptâ, conferunt quosdam Decanatus & Præbendas quæ sunt sui patronatûs, Jure suo, absq; consensu Episcopi, saltem expresso.* Of this He gives a notable Instance, and then reports the Opinion of a *Canonist*, qui dicit hoc procedere de privilegio super hoc specialiter indulto. But another rather founds it upon this ground, *Quod Rex Angliæ qui est Dominus Omnium Ecclesiarum Angliæ & Normanniæ, quæ ab eo magna Feuda habent, quandoq; ratione patronatûs, quandoq; ratione Feudorum, confert præbendas ipsorum.* See more *ibid.*

(a) This is largely disputed by *Lynwode*, *ibid.*

sensation (b) freely, and simply; without taking any Money, or other Reward, for it; or requiring any manner of Obligation, whether Bond, or Promise, upon any such account. For this the Bishops themselves, while the disposal of these Benefices continued in their Own hands, were required to do; and therefore those to whom they granted their Right of Patronage, must be obliged to do likewise.

How strictly the Canons of the Universal Church have forbidden all such kind of Trafficking in the concern of Orders, and Benefices, I have before shewn. Now these Canons (c) our Church has taken into her Code, and made them the Rules of Her own Discipline: And therefore whatever Authority they had in any other Churches, it cannot be doubted but that they must have had the very same in Ours.

BUT our Own Provincial Constitutions are themselves express in this particular: For in the Year 1175, The Archbishop of Canterbury with his Provincial Council (the King himself being present at the passing of their Canons, and Assenting to them) decreed, " That no Patron should make any bargain for the Presentation of any Person to a Church, by which either Money, or other Profit, might accrue to Him, upon pain of being deprived of the Patronage of that Church for ever. And when, notwithstanding this Prohibition, yet Patrons were still contriving how to make their Own account, in the Nomination of their Clerks; (d) Cardinal Ottobon, in his Legatine Synod, forbad not only any Money to be given, or Bond for Money, at the time of the Presentation; but any Agreement to be made for paying a yearly Pension to the Patron out of the profits of the Benefice: And revoked all Engagements of that kind which had been made before, upon any Parochial Churches; unless those to whom the Payments were due, could shew either a lawful Prescription, a special Privilege, or some other certain Right, to warrant their receiving of them.

How many ways both the Patrons, and Clergy, heretofore found out to avoid, if they could, the name of Simony, and yet still con-

(b) Concil. Lond. Ann. 1075. Contra simoniacos: Concil. Westm. Ann. 1175. 2 Spelm. p. 105. That Churches shall be given gratis & liberè: Decret Gul. Courtney, Ann. 1391 Contra Choppe-Churches.

(c) Concil. Hertford, Ann. 680. Et Concil. Calcyth. Anno. 787.

(d) Concil. Westm. Ann. 1175. Tit. MS. in antiquo Cantuar. num. xvii. Ne aliquid detur pro Presentatione Ecclesiæ habendæ. — And the Canon its self runs thus: Nulli liceat Ecclesiæ nomine dotalicium [MS dotalicitatis] ad Aliquem transferre, vel pro presentatione alicujus Personæ pecuniam, vel aliquod emolumentum, pacto interveniente, recipere. Quod si quis fecerit, & in Jure Convictus, vel Confessus fuerit (so it is in the MS.) ipsum, tam Regiâ, quam Nostrâ freti Autoritate, patrocinio ejusdem Ecclesiæ in perpetuum, privari Statuimus.

tinue to commit the Crime, (as One of our (e) *Own Canonists* rightly stated the Case) I shall not need to say. That of Paying a *Tearly Pension* to the *Patron* out of the Profits of the *Benefice*, I have already mentioned. (f) Another, condemn'd in like manner by *Cardinal Orbo*, was this; for a *Parson* to procure the *Patron*, to Present One to a good *Benefice*, and then agree with him for a Lease of the *Parsonage*, at an Under-Rate; and Paying that to the *Incumbent*, to reserve all the *Rest of the Profits* to himself. (g) A third, rejected by the same Authority, was, (upon some frivolous pretence or other) to divide a *Parsonage* into two *Parts*; and so the *Incumbent* took One, and did the business for it; whilst another was intituled to the *Profits*, without the *Burden*, of the *Other*. Sometimes no *Person* was *Presented* at all, but only a *Curate* put in to supply the *Church*, with a very small *Stipend*; and the *Profits* *Sequestred* into *Other hands*: And, lastly, upon some *Secret Contracts*, the *Incumbent* was many times induced to *Resign* his *Parsonage* to Another, and take only a Portion in it, as a *Vicar* to him to whom he had *Resigned* it. The End of all which contrivances was meerly this, to escape the *Penalty of Forbidden Contracts*, at the same time that they did what was forbidden: And injure the *Church* no less by such fraudulent Projects, than if they had Openly avow'd what they Secretly meant by it.

To prevent any Such foul, and pernicious Agreements, and if it were possible, to make a discovery of them; it has been all along the Care of our Church not only to forbid them, but to require every *Clerk* at his *Institution*, to Swear, that He had not entred into Any of Them. Of this we have an Early Instance in the (h) *Synod of Westm.* A°. 1138. where it was Ordained, "that before the *Bishop*" "invested any one in a *Benefice*, He should * Swear upon the *Gospels*, "that He had neither given, nor promised, any thing for it, either "by himself, or by any other Person: And in case it should be suspected that any thing of this nature had been done, the *Presentation* should be void; and both the *Giver*, and the *Receiver*, be lyable to a *Canonical Censure* for the same. This decree was renew'd in

(e) *Jo. Athon.* in dict. Cap. *Quia Plerumq.* Voc. *Et passionis.* Quales *Moderni Studio Cavilloso*, ex palliatione damnabili viis imaginativis adinvenire indies non desistunt, ut *Simonia Verbum* effugiant, *Mentem & Intentionem amplecti pravitatis hujusmodi non parentes.*

(f) *Concil. Lond. Othon.* A°. 1237. Cap. *Alicubi* audivimus.

(g) *Ibid.* Cum sit *Ars.*

* JURAMENT. I.

(h) *Concil. Westmonaster.* A°. 1138. Cum investituram aliquis per *Episcopum* acceperit, *Præcipimus ut super Evangelium juret*, Se nihil propter hoc, vel per se, vel per aliquam aliam personam, dedisse alicui, vel promississe.

the (i) Council of Oxford, under Stephen Langton, A°. 1222. and the terms of the Oath, made more full and comprehensive: For by vertue of this Constitution, Every One who was Presented to any Benefice was obliged to * Swear before the Bishop who Admitted him, not only that He had not Given, nor Promised any thing, for the Obtaining of his Presentation, as before; but moreover, That he had not entred into any Agreement whatsoever, upon the account of it. And if by this means any just Suspicion should arise of his having made any such Contract. He was not to be Instituted, notwithstanding his Oath; " Because such Contracts are manifestly contrary to the Canons of the Church. There has, indeed, I know not how, some difference arisen about the latter part of this Canon; which even Lynwode himself read so, as if this Oath were not always to be ministred by the Bishop, at every Institution; but only in such Cases where the Person Presented was suspected of such an unlawful Practice. But as the Other Reading is warranted by the most antient Manuscripts, so do's it much better agree with the Definitions of our Church; which Required such an Oath to be generally tender'd, to All Persons, at the time of their Institution; and in the Synod of Westminster before mentioned, decreed, to the very same purpose, that the Person so Swearing should not be admitted, but his Presentation be Void, if (notwithstanding his Oath) it was presumed that He had made any bargain for the Procuring of it.

It was but a few years after, that St. Edmund Archbishop of Canterbury carried this matter still farther: And because the most usual way of Trafficking in these Cases was by Penfons to be paid out of Bene-

* JURAMENT. II.

(i) Concil. Oxon. Cap. *Præcipimus*. The title of this Canon in the Lambeth M S. is, *Ne fiat Simonia in Præsentatione*. But in another M S. of the Bishop of Eli, it is more full; *De juramento reddendo à Præsentatis, propter Simoniacam pravitatem*. The Oath its self is this; *Quod propter præsentationem istam, nec promiserit, neq, dederit aliquid præsentanti; nec aliquam ob hoc inierit pactionem*. Conf. Lynwode. de *Jurejurando*. Cap. *Præsentii*. In the latter part of this Constitution there was an early Corruption. Sir William Dugdale's Copy, from the Cotton library, reads it; *Si tamen ei propter hoc merito videatur suspectus—cum talia manifestè Canonicis obviunt institutis*. Where leaving out two Words only, after *suspectus*, He has perplex'd the whole; viz. *non Admittatur*. Whether this were the Omision of the M S. its self, or the Transcriber of it, I cannot tell, having never examined it; but in a M S. of Lambeth, written about the time of Archbishop Chichely, and another of the Bishop of Eli, not long after; it runs in these Words; *Si tamen propter [M S. Elien. Super] hoc merito videatur suspectus, non Admittatur, cum talia manifestè Canonicis obviunt Institutis*. This agrees with what had been Ordain'd in the Synod of Westm. before Cited: Where after the Oath præscribed, it follows; *Si autem præsumptum fuerit, viz. that any thing had been given, or promised, for the Presentation, irrita hujusmodi donatio erit, & tam Dator, quam Acceptor, Ultrioni Canonica subiaceat*. How Lynwood came to read it differently from all the Other Copies, as antient as his own time, I cannot imagine. See him loc. cit.

fices, (k) He determined, that as well the Patron, as his Clerk, should Swear that "no unlawful Promise, or Agreement had been made between them; and that the Church should not by any means be any farther incumbered than it was before. It is true this Constitution is restrained by a word which imports that this kind of Oath, of the Patron as well as Clerk, should not be administered, unless there was some intimation, or suspicion, of such a Practice. But still the Bishop was left to judge of this: And if He saw cause to insist upon it, they were Both obliged to purge themselves, by Swearing according to the Tenour before mentioned.

AND thus this matter Rested for about an Age and half; when a new sort of Corrupt Contracts in the obtaining of Benefices being found out, a farther Provision was thought necessary to be made for the discovery of Them. The Way they took was this: Under a pretence of Permutation, an Agreement was made; and so One who had a Rich Benefice, Resigned it in order to Exchange with One who had a Poorer. Sometimes a Man either by Money, or Interest, procured a Benefice for another, who was bound either to Resign it upon Notice; or not to Lay Claim to any of the Profits of it, so long as He continued to Enjoy such a Benefice: And so He was either forced to be content with what was paid Him for serving the Cure; or, He was Obligated to Resign, if He insisted upon more; or Otherwise, whenever the Person to whom He was engaged had any Other Purpose, or Interest, to serve by it. To prevent these Abuses it was ordained, that before any Bishop gave any Clerk Institution, He should take a Corporal Oath of Him, * (l) "That he had

* JURAMENT. III.

(k) Constit. S. Edmund. Cant. Arch. A^o. 1236. Tit. De novâ pensione à presentatis non præstandâ [add. ex M S. Lamb. Præsentantibus.] Quoniam circa Pensiones fraus sæpius solet, & Simoniaca pravitas, perpetrari; Nos ut melius obviemus talibus morbis, præsentantis & præsentati, Præcipimus (so the M S. not as it is printed, Recipimus) interdum Juramentum, "Quod nec promissio, nec pactio illicita intervenerit; Et quod Ecclesia non debet amplius obligari, quàm prius fuit obligata. Here we see the Word *illicita*, which answers to our Word *Simoniacal*, in the present Oath enjoyn'd, first put in; which manifestly refers to all such Promises, and Contracts, as the Discipline and Canons of the Church, then forbid.

* JURAMENT. IV.

(l) Decret. Gul. Courtneii contra Choppe Churches. The Oath here prescribed is this; Quod propter Eorum Præsentationem non dederunt, nec promiserunt, directe vel indirecte: per se, vel submissas personas, Aliquid, Præsentantibus, vel aliis Personis quibuscumq;: (Thus far the Ancient Oaths before establish'd went:) Quodq; Obligati non sunt, nec Eorum Amici pro se, juratoriâ, aut pecuniariâ Cantione, de ipsis Beneficiis Resignandis, vel Permutandis; nec aliquem illicitum in eâ parte Contractum, Factum, vel Promissum, de ipsorum voluntate, & Scientiâ, sunt sortiti: This was now expressly added, tho' as to the Presentee Himself before included in that general Clause, Nec aliquam ob Hoc (namely his Presentation) inierit Passionem.

" neither Given, nor Promised any thing, for his Presentation; directly, or indirectly; by Himself, or by any Other; either to the Person who Presented Him, or to Any Other Person whatsoever: And that neither be Himself was Obliged, nor any of his Friends for Him, by any Oath, or Pecuniary Bond, either to RESIGN, or EXCHANGE his Benefice; nor had any Unlawful Contract, Deed, or Promise, lying upon him to that effect, with his Knowledge or Consent. And that in all Exchanges of Benefices, the like care should be taken, not to allow of them, unless the Persons exchanging were Themselves present; and the Livings upon an exact Enquiry were found to be of Equal Value: And they did moreover Swear that in Such their Exchange, no Simoniackal pravity, deceit, or fraud, had intervened, either Publicly or Secretly. The natural Observation from the Latter Part of which Constitution, compared with the foregoing, is this; That to Resign, or Exchange any Living, upon a Pecuniary Bond or Promise, made at, or before Institution, is a Corrupt Practice; and in the Eye of the Ecclesiastical Law, a Simoniackal Pravity.

How far that body of Laws which was drawn Up by vertue of several Acts of Parliament made in the Reigns of King Henry the VIIIth, and King Edward the VIth, for the Reformation of our Ecclesiastical Laws, may be consider'd if not for their Authority, (because they were not Confirm'd as those Statutes required) yet at least as an Evidence of what was then accounted to be the law of our Church in this particular, and in no wise Repugnant to any Laws of the Realm, I shall not much dispute: But it is evident that by these, all (m) manner of Contracts, Payments, and Promises, in the disposal of Benefices, were utterly forbidden; and an Oath appointed to be ministred, and taken, at the time of Institution against them.

THE same was order'd by Card. Pool in his decrees for the Reformation of the Church of England: (n) In the IXth of which against Simony, founded upon the Canons of our Own Synods, and drawn up

(m) De admittend. de Eccles. Beneficia. Cap. 24. Every person presented to any benefice was required to Swear, "Se nec antea dedisse quicquam, nec postea daturum, aut de dando pactum intercessisse, vel intercessurum, vel ipso auctore, vel alio quocunq; procuratore aut Vicario, respectu presentis sacerdotii quod jam sumit: Et si quisquam, illum celans, hoc in genere quicquam molitus est; Se, quam primum norit Episcopo renuntiaturum, & ejus abutrio cessurum parito sacerdotio: Tum autem, Non gravaturum se Ecclesiam suam novis, aut audioribus Pensionibus. Where the words again are General against all manner of Contracts, or Promises; and plainly shew that all such Bargain, made in Order to the Procuring of a Benefice, and before the taking of it, were accounted to be Simoniackal. Compare the 4th Oath with this.

(n) De Reformat. Angl. Decret. ix, de Simoniâ.

agreeably to the Sense of all *Christian Churches*, He prohibited not only all giving of money, with all grants of any part of the Profits of the *Benefice*; but all kind of *Bargains, Promises, and Agreements whatsoever*, made for the procuring of any Living, or with respect to any thing that concern'd the Obtaining of it: And prescribed an Oath to be taken against it, as full and particular as it was possible for words to make it. And by Comparing the Books of *Institution* at that time with this decree, I find it entred, to this purpose; that the Person admitted, among other things, had Sworn, *quod nihil dedit, nec promisit Patrono, nec aliquam pactionem fecit cum Eodem, vel Alio, ejus nomine & jure, pro obtinendo Beneficio ad quod &c. Presentatus extitit.*

How our Law stood in the time of King *Edward the Sixth* with Relation to this Matter, I have before observed from the *Book of the Reformation of our Ecclesiastical Laws*. But because it will give us the more light into what pass'd in the following *Reign* under *Q. Elizabeth*, which comes next in order to be consider'd, I shall farther observe, that among the Rest of his Ecclesiastical Injunctions, He gave this for One; (o) "That to avoid the detestable Sin of *Simony*, and because buying and selling of *Benefices* is Execrable before God, therefore all such Persons as buy any *Benefices*, or Come to Them by fraud, or deceit, shall be deprived of such *Benefices*, and be made unable at any time after to Receive any Other Spiritual Promotion. And such as do Sell Them, or by any colour do bestow them for their own Gain and Profit, shall Lose the Right, and Title of Patronage, and Presentment, for that time; and the Gift thereof, for that Vacation, shall appertain to the Kings Majesty.

THIS severe Injunction (p) founded upon the Antient Constitution under *K. Henry the II*d before mentioned, was renew'd in (q) the first of *Elizabeth*: And at the meeting of the Archbishop, Bishops, and other Commissioners at *Lambeth*, about two years after, it was farther Agreed, (r) "That at the Institution of every Parson, or Curate, they should be examined upon the Articles following, viz. "Of Secret Contracts for Alienation of their Glebe-Lands; * For the forgiving of the Patrons Tithes; * For Pensions newly Executed; "And for Sums of money, and other Contributions: * With Intimation to Them, that if they should afterwards be found culpable in any of the same, they should be deprived.

It was but three years after that the same Commissioners, in their

(o) See *K. Ed. with Injunctions. Anno. 1547. in Sparrows Collect. pag. 12.*

(p) See before Note (c)

(q) See *Q. Eliz. Injunctions. Sparrow pag. 75. 76.*

(r) *Synodal. in Col. C. C. Cant. Apr. 12. 1561.*

Articles published January the 25th A°. 1564, (s) "required the Ordinaries to Use good diligent Examination; to foresee all Simoniacal Pacts and Covenants, with the Patrons, or Presenters, for the Spoil of their Glebe, Tithes, or Mansion Houses". And in the Synod of 1571, it was recommended to the Bishops, to (t) Exhort the Patrons of Benefices, among other things, "to proceed sincerely, with all Integrity, and without Corruption, in the disposal of Them: For that They would use all lawful, and honest means, to find out the Truth: And if either at the time of their Presentation, or afterwards, they should discover any Corruption, or Simoniacal Commerce, howsoever it were done, tho' never so closely, or indirectly; by Themselves, or by any Others; to the end that any Money, Price, or Advantage, or any part of the Profits of the Living, may Come to Them; They would publish and make known the Simony, not only in their Cathedral Churches, but in Other Places, to their Eternal Scandal and Reproach: And Remove the Clerks whom they had so wrongfully Presented, not only from the Service into which they had deceitfully entred, but from all other Ministerial Functions; and indeed turn them out of their Dioceses.

WHEN the *Oath of Simony, (u) settled not long after by the Convocation of 1604, and still required to be taken by every Clergyman at his Institution to any Benefice, was put into the form which was there prescribed, I cannot tell. But that some such Oath had continued to be ministred all along, from the time of the Reformation, (as it had been for at least four hundred years before) the Orders and Constitutions both of our Princes, and Synods, before-mentioned, will not suffer us to doubt. And therefore, upon the whole, these two things seem plain and certain, as to this matter; that our Church has, from the beginning, taken all imaginable Care, 1st, To forbid all manner of Commerce, whether by Money, Bonds, or Promises, in the Disposal of Ecclesiastical Benefices, as Corrupt and Simoniacal: And, 2dly, To discover, and punish them, in the severest manner; if, after all, any Patrons, or Clerks, should be so wicked as to engage in such a Commerce.

How these Prohibitions of the Church, agree with the Laws of the Realm, I shall need say very little to shew. It has always been allow'd that the judgment of these matters belongs to the Church; and, if at any time, any Notice has been taken of them, (as once

(s) Sparrow's Collect. pag. 127.

(t) Ibid. pag. 239. 240.

* Vth OATH.

(u) Can. 1604. xl.

or twice there has) in the *Parliament* its self; yet still even that *High Court* has referr'd it to the *Ecclesiastical Power* to take care of them.

OF this we have an Instance upon the *Rolls* as far back as the latter End of *King Edward the III^d*: (x) Where the *Commons* representing that "such is the *Law* of the *Church*, that *Ecclesiastical Benefices* ought to be freely given, for pure charity, without prayer, and without payment; and that no One ought to give either Gold or Silver, or any other thing in the *World*, for a *Church-Benefice*; nevertheless the *Lay-patrons* of *Churches* seeing so much Covetousness and *Simony* reigning in *Church-men*, take Example by them, and sell the *Churches* of which they are *Patrons* to such Persons as, like Beasts, destroy them; even as *Christ* was sold to the *Jews*, who put him to death;" and thereupon Praying for a suitable remedy; The *King* promis'd "to deal with the *Pope* concerning these matters, till he had obtained remedy in them". And when a (y) *Petition* of the like nature was renewed in the xviith of *King Richard the II^d*. "That the *King* would please to Order that all manner of *Patrons* of *Churches* should present sufficient, and discreet *Curates*, to Reside upon their *Benefices*, and to instruct and teach their *Parishioners*, that they might not perish for want of good Teaching; The Answer was, "That this belonged to the *Bishop's Office*; and that the *King* would that they should discharge their *Office* duly.

I do not find that, from this time forward, the *Commons* any more attempted to take these Matters out of the hands of the *Bishops*. Sure I am that in the (z) fifth of *2. Elizabeth*, when an *Act* was made for the due Execution of the *Writ de Excommunicato Capiendo*, among the Other Crimes, and Offences, mentioned in the *Præ-amble* "to appertain MERELY to the Jurisdiction and Determination of the *Ecclesiastical Courts and Judges* of this *Realm*; that of *Simony* is mentioned as One to be express'd in the *Significavit*, and thereby acknowledged to belong to them. And when (a) some years after another excellent *Law* was made against *Abuses* in *Presentations* to *Benefices*, and divers temporal Penalties were imposed for the better prevention of them; there was a *Salvo* expressly put into it, not only to acknowledge, but to preserve, the *Jurisdiction* of the *Church*, in these remarkable words, "That this *Act*, or Any thing therein contained, should not in any wise extend to Take away, or Restrain, any Punishment, Pain, or Penalty, limited, prescribed, or inflicted

(x) Rot. Parl. 50. Edw. III. num. 98, 99.

(y) Rot. Parl. 17. Ric. II. num. 43.

(z) 5 Eliz. chap. 23.

(a) 31 Eliz. chap. 6.

“ by the *Laws Ecclesiastical*, for any the Offences before in this *Act*
 “ mentioned; but that the same shall remain in force, and may be
 “ put in due *Execution*, as it might be before the making of *this Act*:
 “ This *Act*, or any thing therein contained, to the contrary in any
 “ wise notwithstanding.

It is therefore certain that both the *Ecclesiastical Constitutions* before-mentioned, relating to these kind of *Corrupt Payments*, *Contracts*, and *Promises*; and the *Penalties* thereby directed to be inflicted upon such of the *Clergy* as should be guilty of them, are not only not *impeach'd* by any of our *Statutes*, but are *expressly allow'd* of and *confirmed* by them: And that this *Act*, made for the *Restraining* of some of the most notorious instances of them; and the more *effectual Punishment*, of the *Lay-patrons* especially, who could not be so duly prosecuted in the *Spiritual Courts* as they deserved to be; is not *privative* of the *Jurisdiction* of the *Church*, or its *Constitutions*, in this particular, but *Accumulative*: It leaves the *Church* all the *Authority* it had before; *Confirms* its *Canons*, and the *Penalties* of them, in these Cases; Only whereas, till now, these *Crimes* were *Enquirable*, and *Punishable*, by the *Ecclesiastical Judge* alone; they may now in some Cases, specified in this Statute, be brought before the *Civil Magistrate* also; and be *examined* into, and *corrected*, both by the *One* and the *Other*.

BUT let us see, how far this *Statute* goes in the *restraining* of this kind of *Commerce*. And, first, with respect to the *Patron* who *presents*, it declares; That “ If any Person shall for any sum of
 “ *Money*, *Reward*, *Gift*, *Profit*, or *Benefit*, *directly* or *indirectly*;
 “ Or for, or by reason of, any *Promise*, *Agreement*, *Grant*, *Bond*,
 “ *Covenant*, or *Other Assurance*, of, or for any sum of *Money*, *Reward*, *Gift*, *Profit*, or *Benefit* whatsoever, *directly* or *indirectly*; *Present* or *Collate* any Person to any *Benefice* with *Cure* of *Souls*, &c.
 “ Or give, or bestow the same, for, or in respect of, any such *Corrupt Cause*, or *Consideration*; that every such *Presentation*, *Collation*, *Gift*, and *Bestowing*; and every *Admission*, *Institution*, *Investiture*, and *Induction*, thereupon, shall be utterly void, and frustrate, and of no *Effect in Law*: The *Queen* to have the next *Presentation*; and the *Clerk* to be disabled to have, or Enjoy that *Benefice* to which He had been so *corruptly Presented*. From the wording of which Clause, we may observe by the way, that to present to a Living for *Any Money*, *Reward*, *Gift*, *Profit*, or *Benefit* whatsoever, is by the Law esteem'd a *Corrupt Cause* or *Consideration*. And, 2dly, With relation to the *Ordinary* who is to be *Presented* unto, and to *Induct* the *Clerk* into his *Living*; it Enacts, “ That if any
 “ Person, shall for any sum of *Money*, *Reward*, *Gift*, *Profit*, or Com-
 “ modity

“ *modity whatsoever, directly or indirectly, (other than for usual, and lawful Fees) or for, or by reason of, any Promise, Agreement, Grant, Covenant, Bond, or other Assurance of, or for, any sum of Money, Reward, Gift, Profit, or Benefit whatsoever, directly or indirectly, Admit, Institute, Install, Induct, Invest, or Place any Person in, or to, a Benefice with Cure of Souls, &c. the Person so Offending shall lose the double value of one Year’s Profit of every such Benefice; the Institution and Induction be void; and the Patron be at Liberty to present again to it, as if the Incumbent had been naturally dead.*”

THE sum then of this whole matter is this; That by the *Laws* both of this *Church and Realm, Ecclesiastical Benefices* ought to be *freely given, and taken*: That no *Payment, Contract, or Promise*, may be made either to, or with, the *Patron* for his *Presentation*, or the *Bishop or Ordinary* for his *Admission*, upon any such *Nomination*: The *Penalties* before inflicted by *Ecclesiastical Authority* only, or at most by the *Prerogative of the Crown* concurring with, and corroborating its *decrees*; namely, the *Deprivation of the Clerk*, and the *Incapacity of the Patrons to present for that turn*, are both *Confirm’d by Act of Parliament*; and either the *Ecclesiastical, or Civil, Magistrate*, may now proceed, as *Occasion shall offer*, to judge in these *matters*, and *punish the Offenders* as the *Case shall require*.

BUT, 4thly, and to proceed: It is the *right of the Parochial Clergy* not only to be *Presented, Instituted, and Inducted into their Benefices, Freely, and Un-conditionally*; without any *payment, contract, or promise*; but to *Enjoy the Profits and Revenues of them, fully, and intirely*; without any *burdens* laid upon them, or any *diminution of the just dues* which ought to arise from them.

I have before observed how among the other *corrupt Bargains* made by *Patrons* for their *Presentations*, some of the most usual were these, either to become *Tenants* to their *Benefices*, and *rent the profits* of them at an *Under-rate*; Or to allow only a certain *Stipend* out of them to the *Incumbent*, and retain *the rest* to their own proper Use; Or lastly, to *reserve some Pension to themselves* out of the *Fruits* of them. But all these *Oppressions* have ever been look’d upon as *Unjust Encroachments* upon the *Churches Rights*; and condemned not only for the *Unlawfulness of the Contract*, but for the *Injury* done to the *Benefices* themselves, which have by this means become greatly *Incumbred and Diminished*.

THERE was, indeed, a prevailing *Opinion* among the *Canonists* heretofore, that the *Pope*, as *Sovereign of the Church*, might give leave for some of these *Contracts* to be made; and a * *distinction* was found

* See Panormit. in 1 Decret. de Elect. Cap. Significasti. num. 5.

out to excuse him from *Sin*, between what was *Simony* by the *Law of God*, and what was *Simony* only by the *Laws of the Church*: Of the *latter* of which the *Pope* being *Master*, He could not be guilty of any *Fault* by any thing he could do in *derogation* of them, tho' all other *Prelates* besides might be. And upon this *Foundation* many *Oppressive Acts* were done either by his *Order*, or *Consent*; and great complaints made both by *Patrons*, and *Others*, as the very *Rolls* of our *Own Parliaments* abundantly shew. But still, whatever the *Pope* did, the *Canons* of the *Church* condemned all these sort of *Practices*; and the *general Rule* was, that *Benefices* should *not be diminished*, but should pass from One *Incumbent* to Another in the *same State*; without *Burden*, and without *Defalcation*.

To this end it was ordained by (b) *Stephen Langton* in the *Council of Oxford*, Ann. 1222. "That no *Parson* should presume to *Sell*, *Mortgage*,
" or, by any Other means, *Alienate* to his *Own Relations*, *Friends*, or
" any *Others*, the *Possessions*, or *Revenues* of the *Church* committed to
" Him: That if any thing of this kind was done it should be of no force
" in *Law*, but the Person who presumed to do it should be *deprived* of
" his *Church*, which He so endeavour'd to *injure*; and if He, to
" whom any such *alienation* was made, did not, upon notice given,
" *Restore* what *belong'd* to the *Church*, He should be *Excommunicated*;
" and in no wise be *Absolved* till he made *Restitution* of what
" He had unduly gotten." But his Successor, *St. Edmond*, went farther: (c) He provided not only against all *Mortgages* and *Alienations* of the *Churches Profits*; but decreed "that no *Pension*, great
" or little, should be granted by any *Clergy-man*, beyond Those
" which had *anciently been paid*.

THESE *Canons* thus made, were doubly *Confirmed* both by *Card. (d) Otho*, and (e) *Ottobon*, in their *Legatine Councils*: Where taking notice of the corrupt practices not only of the (f) *Patrons*, but *Ordinaries* too; who oftentimes would not admit a *Clerk* to the *Benefice* to which He was duly *Presented*, without some *Payment*, or *Portion*, reserved to themselves out of it; or granted for a certain time, or for ever, to the *Uses* of such *Persons* as they should appoint; They expressly forbade any such *Diminutions*, or *special Assignments* to be made; and *Revoked* all such as had been made, since the former of these *Prohibitions* to the contrary.

(b) Concil. Oxon. Anno. 1222. Cap. Ecclesiarum. Conf. Lynwode Prov. De rebus Eccles. Alienand, Cod. Cap.

(c) Constit. S. Edmund, Anno. 1236. Cap. Item. de Nova pensione non Prestanda.

(d) Constit. Othon. Cap. Cum sit ars.

(e) Constit. Ottobon. Cap. Unitatem.

(f) Ibid. Cap. Quia plerumq;

BUT there were other ways of lessening the Revenues of the Church, and those too no less forbidden than the foregoing. Such was that of taking Benefices to farm, and paying a small Rent to the Incumbent for them: This therefore (g) Card. Otho in like manner restrained, in the same Synod; by forbidding any Parson to let his Benefice, either wholly or in part, to Farm for perpetuity; and Annulling all Bargains that should be made to that purpose. And Card. (h) Otton confirm'd it with a farther Punishment: He ordain'd that a third part of the Profits of what was so let to Farm, should be applied to the Fabrick of the Cathedral Church; that is, if they were let to any Lay-man at all; Or to any Clergy-man for above the term of five Years; Or to the Patron, whatever He were, whether a Clergy man or Lay-man.

THE ground of all these Canons was the same; (i) namely to prevent the diminution of the Churches dues; and to take care that neither the folly, nor wickedness, of One Incumbent, should turn to the Prejudice of Those who succeeded Him. A thing so reasonable that it still continues to be the undoubted Right of the Clergy: Insomuch that, at this day, no Alienation can be made of any Part of the Revenues belonging to any Parochial Church, without the express Consent of the Bishop and Patron, as well as of the Incumbent; who by their Relation to every such Church are particularly Concern'd to enquire into such matters, and see that no injury be done to It.

BUT the Beneficiary has a farther Right to the Fruits of his Church than this: He is not only to enjoy them fully, and without clog, when He is in, but to receive the whole Profits of his Benefice during the Vacancy; at least from the time that He was Presented to it. There had indeed (k) a Custom too much obtained heretofore, that the Bishops, and other Ordinaries, when a Church became Vacant, pretended for such a certain time to take to themselves the Profits of It. And this our Canonists tell us they founded either upon a Special Privilege, or an Antient Custom: And where either of these could be proved (as the Latter we are told had in effect been the Custom of many Prelates in England) there the Ecclesiastical Law allow'd of it; but otherwise, (l) it was resolved, that they should All be Reserved for the future Incumbent, excepting only what was

(g) Constit. Otho. Cap. Alicubi Audivimus.

(h) Constit. Otton Cap. de Firmis.

(i) Panormit. in 1. de Transact. cap. Statuimus. & ib. Capp. de Cetero. & Praterca.

(k) Vid. Gloss. Athon. in Constit. Ottononi. Cap. Ecclesiarum. Voc. Vel ex Consuetudine. Conf. Gloss. Lynwod. in Cap. Cum Secundum Apostolum. De Institut. Voc. Ad Episcopum.

(l) Constit. Otton. Cap. Ecclesiarum. Vid. Gloss. Athon. Voc. In Canonibus.

necessary to be expended upon the *Service* of the *Church*, or for the *Use* of the *Benefice*.

INDEED, by the (m) *Constitution* of *Stephen Langton*, in the *Council* of *Oxford*, it may seem a doubt, whether the *whole Profits* which arose during the *Vacancy* were to Go to the *Incumbent*, or only what became due *after* the *Bishop* had *Admitted* of his *Presentation*. For so the *decree* seems to import, which *Establishest*, "That if
" any *Bishop* should defer above *two months* to admit a *Person Canonically Presented*, and without the *Contradiction* of any One; He
" should be obliged to *Restore* to Him all such *Fruits* of the *Living*,
" when *Instituted*, as had come to his Hands *after the time that the*
" *Presentation was tender'd to Him*. From which *Constitution* it seems to follow, that if the *Bishop* did admit a *Clerk* within *two Months* after He tender'd his *Presentation* to Him, He should not be accountable for any thing He had Received out of the *Living*, before the time of the *Clerks admission* to it. And so the (n) *antient Title* of that *Canon* implies; which is to this purpose, That *Institutions* should not be delay'd: And that the *Person Instituted* should have all the *Profits*, from the time of His *Institution*. And the (o) *Statute* of the 28th of *Henry the VIIIth*, which first gave to the *Incumbent* the *intire Profits* during the *Vacancy*, for the better enabling of Him to pay his *First-fruits* to the *Crown*; shews this not only to have *anciently been*, but to have continued to be, the *Custom* and *Right*, of the *Bishop*, to that very time: Where it complains, "That divers of the *Archbishops* and *Bishops* of this *Realm*, did thereupon,
" not only when the time of *perceiving*, and *taking* of *Tithes*,
" (that is to say *Wool*, *Lamb*, *Corn*, *Hay*, and *Tithes* usually paid
" at the *Holy time* of *Easter*) approached, defer the *Collation* of such
" *Benefices*, as were of their Own *Patronage*; but also did upon
" *Presentations* of *Clerks* made to them by just *Patrons*, *Protract*,
" and *Defer* to *Institute*, *Induct*, and *Admit*, the same *Clerks*, to the
" intent that They might Have, and *Perceive*, to their Own *Use*, the
" same *Tithes* growing during the *Vacation*". Be the Case how it will as to the *Ancient Custom* and *Claim* of the *Ordinaries* in this particular; (which after all, I conceive arose from the *Primitive State* of the *Church*, and that *Right* which the *Bishops*, Originally,

(m) *Concil. Oxon. Cap. Cum Secundum Apostolum*. And so *Lynwode* intimates. *De Instit. & Commend. Eod. Cap. Voc. Factam*. A quo tempore, says he, viz. the time of his *Presentation*. *Quæsitum est Presentato Jus ad ipsam rem, Sc. Ecclesiam*. upon which he founds the reason of this *Constitution*.

(n) *De Institutionibus non deferendis*: Et, quod *Institutus* habeat omnes *fructus* à tempore *Institutionis* suæ. In MSS. *Lamb. Eli. &c.*

(o) *Stat. 28 Hen. viii. Cap. 11.*

had to the whole Revenues of it; which they distributed to the Priests who officiated under them as they saw fit, before any appropriate Tithes were fix'd to Certain Parishes: The Fruits whereof, whilst there is no Incumbent in being, do therefore seem naturally to Return to the Bishop, together with the Care of the Church, till a New Clerk, is Presented to, and Instituted by Him, to receive the One as the due Reward of the Other: The Present Law is certain, and very favourable to the Parochial Clergy; namely, "That the Tithes, Fruits, Oblations, Obventions, Emoluments, Commodities, Advantages, Rents, and all Other whatsoever Revenues, Casualties, or Profits, Certain, or Uncertain, afferring or belonging, to any—Parsonage Vicarage, &c. or Other Spiritual Promotion, Benefice, Dignity or Office, &c. Growing, Rising, or Coming, during the time of Vacation of the Same Promotion Spiritual, shall belong and offer to such Person as shall be thereunto next Presented, Promoted, Instituted, Inducted, or Admitted, and to his Executors;—any Usage, Custom, Liberty, Privilege, or Prescription, to the contrary, Had, Used, or Being, in any wise notwithstanding.

THIS is the Present Right of the Parochial Clergy in this particular: Every Incumbent is to come into the full, absolute, and intire Possession, of the Fruits of his Benefice; and He is to Receive Them: not, as heretofore, from the time of his Admission only, but during the whole Vacancy of his Living; So much only Excepted as is expended upon the Supply of the Cure, "and for the Gathering and Collecting of the Tithes, Fruits, Emoluments, Rents, and Other Profits, rising and growing, during the Vacation aforesaid.

BUT, (5thly,) and to Conclude: It is the Right of every Parochial Presbyter, as to be Instituted into his Benefice by his Bishop, or Other Ordinary; So being Instituted and Inducted into it, not to be Deprived of it, but in a due Course of Law; for such Causes, and after such a Manner, as the Canons of the Church Prescribe. This is so known a Part of Church-Discipline, and was heretofore so strictly observed, that even the Beneficiary Himself could not (p) Resign his Cure to Go to Another, without the consent of his Bishop: (q) And therefore when the way of Postulation came in, by which a Prelate of One Church was Chosen to Another; if He Consented to the Election without the Allowance of his Bishop first obtain'd, his Consent was reputed to be Unlawful: And all the Remedy was, that if the Bishop maliciously deny'd his Assent to such an Election, as was otherwise judged to be for the Good of the Church, He might be

(p) See Pag. 21. Not. x.

(q) Pag. 22. Not. x.

Appealed against to his *Superior*, who (if he saw reason) might *compel* the *Bishop* to give his *Prelate* leave to *Recede* from his *Church*, and be *Translated* to that *Other* to which he was *Elected*. But much less could any *Patron* turn out his *Clerk* against the *Bishop's* Will: In-
 so-much that when some of the *Religious*, in their *Exempt Jurisdicti-
 ons*, Pretended to *dismiss* the *Incumbents* of their *Own* *Appropriate
 Churches* without the *Bishops* Knowledge, and Consent; (r) it was
 Resolved, that such as were once *Instituted* by the *Bishop* into their
Churches might not be *Removed* without their Allowance, and the
 Council of *Lateran* under Pope *Alexander* the III^d Decreed to that
 Effect.

I should not here have mentioned these *Constitutions* of the *Churches*
abroad, but that our (s) *Own* *Canonists* tell us, they were *Received*, and
Observed, in *this* *Country*: And indeed the Reason of them is such as
 equally intitles every *Bishop* to this *Tie* upon, and *Authority* over, his
Clergy. For whether it be the *Ordination* that Subjects a *Presbyter* to his
Bishop; which either is, or should be, always given to a *certain* *Ti-
 tle*: Or whether it be the *Admission* and *Institution*, and that *Cano-
 nical* *Obedience* which every *Beneficiary* then *Swears* to his *proper* *Bi-
 shop*: Or lastly, whether it be consider'd as a Part of that *discipline*
 which is necessary to the *well* *Ordering*, and *Setling* of the *Ministry*
 of the *Church*, that *Clergy* Men should be *tied* to their *Cures*, and not
 have their *Heads* and *Hearts* always rambling after *New* *Places*,
 and *New* *Preferments* (for which cause alone the (t) good old *discipline* of
our *Church* required, that no " *Presbyter* should *remove* from that *Cure*,
 " to the *Title* of which he had been *Ordained*, to go to *Another*; but
 " should devoutly *continue* there to the *End* of *his* *Life*:) Certain it
 is that it has always been a *Rule* in the *Government* of the *Church*,
 that every *Clergy* man, as he is *admitted* to, so he is *suppos'd* to be
fix'd in, *his* *Cure* for *his* *Life*; and cannot *forsake* it but with his
Bishops Consent, and when the *evident* *Advantage* of the *Church*,
 and *Good* of *Souls*, require that He should do so.

HENCE it was an ancient *Canon* of our *Church* received by us
 almost a *Thousand* *Years* ago, (u) " That without the *Authority*,
 " and *Consent* of their *Bishops*, no *Presbyters* should be either *placed* in
 " their *Churches*, or *put* out of them. And in a (x) *National* *Synod*
 " held

(r) Extr. de Privilegiis. Cap. Cum & plantare. §. In Ecclesiis.

(s) Lynwode. de Presump. Cap. Ne Lepra. Voc. Renuntians. His words are Remarkable.
 Si in manus Laici Renuntiatio facta sit, etiam sponte, non tenet. See Bishop Stillingfleet's Cases.
 Vol. 1. pag. 335. Disc. concerning Bonds of Resignation. p. 58. &c.

(t) See the Excerpta Egberti. Cap. xiii.

(u) Ibid. Cap. xxiii. lvi.

(x) Concil. Westmonast. Cap. 9. Nullus Abbas, nullus omnino Clericus, vel Laicus, quemquam

held at *Westminster*, Ann. 1126. it was decreed, That "No *Abbot*,
 "no *Clergy-man* or *Lay-man* whatsoever, should presume to *Eject*
 "any One who had been *Ordained* by a *Bishop* in his *Church*, with-
 "out the *Judgment* of his proper *Bishop*, upon pain of *Excommuni-*
 "cation." The Result of all which must be plainly this; That
 every One who is *admitted* to any *Benefice* is *admitted* to it for *Life*;
 and the *Bishop* who *admits* him, *gains* thereby such a *Right* to his
Clerk, as no other *Person* can justly *defeat* him of; nor can even the
Clerk himself *retire* from his *Cure* without, much less *against* the
Consent of his *Bishop*.

AND accordingly we may observe what care has been taken by
 the *Constitutions* of our *Church* to maintain this *mutual Right* both
 of the *Bishops*, and their *Clergy*. By order of a (y) *Council* held at
Tork, Ann. 1311: All those are *Excommunicated*, who should seize
 upon any *Ecclesiastical Persons*, and keep them in hold till They have
Resigned their *Benefices*. Many are (z) the *Canons* that have been
 made, from time to time, against such as should *thrust themselves* in-
 to the *Benefices* of Others who are still *Living*, and in *Rightful Pos-*
session of Them. And when, in process of time, some *Patrons*, for
 sinister ends, required an *Oath* or other *Caution*, of Those whom
 They *Presented* to their *Benefices*, that They should *Resign* them upon
demand; Which was but another way of turning them out of their
Cures, and *Exercising* more than *Episcopal Jurisdiction* over them;
 (For a *Bishop* cannot *Deprive* a *Clerk* without a *legal Tryal*; where
Canonical Crimes must be *objected*, and *Witnesses* be *produced*, and the
Person have liberty to *answer* for himself, and *defend* his *Right*;
 Whilst these new *Ordinaries*, in vertue of their *Corrupt Pro-*
misses, or *Contracts*, act *arbitrarily* with them; and *Eject* them out of
 their *Benefices* without any *fault committed*, or *objection* made,
 or any manner of *trial* thereupon:) It was particularly (a) *Ordained*,
 that among Other things to be *Sworn* by every *Priest* at his *Insti-*
tution, this should be One; "That neither He himself was *Obliged*,
 "nor any of his *Friends* for him, by any *Oath*, or *Bond*, to *RESIGN*
 "his *Living*; tho' it were but in Order to an *Exchange* of it.

I shall Close this Point, with that *decree* which was made to
 the same purpose by Those who were appointed by *Act of Parlia-*
ment to draw up the *Body* of such *Ecclesiastical Laws* as were then
 in force, and were no way *Repugnant* to the *Prerogative* of the *Crown*;

quemquam per Episcopum in Ecclesiâ Ordinatam, absq, proprii judicio Episcopi, præ-
 sumat Ejicere: Qui autem secus facere præsumperit, Excommunicationi subiaceat.

(y) Concil. Angl. Vol. ii. pag. 474.

(z) Concil. Legatin. Orthon. Cap. ad Elidendum. Et Conc. Ottobon. Cap. Amoris
 proprii.

(a) Decret. Gul. Courtneii contra Choppe Churches. See before: Note (1) p. 35.

or to the *Laws of the Realm*. (b) It runs to this Effect : " That no mention should be made of *Resigning*, or *Giving up Livings* to any Others, by which any *Agreement* may follow with Any One, until the Ordinary had, by his Power, made it free to be done." (This, it seems, then was, and I suppose still is, the proper Right and Privilege of the Bishop, as to this matter.) " Nor shall the Ordinary suffer any such Thing to proceed, before He who is to Resign has sworn, that no Consideration of Gain, nothing of Simoniackal Pravity, either hath been had, or should be had, on that Occasion.

How well this agrees with the *Laws of our Realm*, (c) the Statute of the 31st of Elizabeth, which I before mentioned, may suffice to shew ; (the only Law that has been made, since that time, with Relation to this matter :) It enacts, " That if any Incumbent of any Benefice with Cure of Souls, shall Corruptly Resign, or Exchange the same ; or Corruptly take for, or in respect of, the Resigning or Exchanging of the same, directly or indirectly, any Pension, Sum of Money, or Benefit whatsoever ; then, as well the Giver as the Taker of any such Pension, Sum of Money, or other Benefit, Corruptly ; shall forfeit the double value of One Year's Profit of the Benefice, for which it was given, or received." But this still supposes a Voluntary Resignation : That the Incumbent is in full, and free Possession of his Benefice, and may keep it if He pleases, but is willing for some Causes, (either lawful or otherwise) of his Own Accord to Resign it. Nor do I know that our Law has any where concerned its self with any other Resignations. And therefore notwithstanding this Statute, made in defence of the Canons of the Church, and to prevent Incumbents from Resigning their Cures, by any Corrupt Agreements, contrary to their Duty and the Ecclesiastical Laws in that behalf ; I may conclude ; that of Common Right, every Beneficiary, who is Admitted into any Living, ought to have a free and absolute tenure in it for his Life ; and not be liable to be Turn'd out of it by Any, but his proper Ordinary ; and that for some fault committed, to which the Canons of the Church have annex'd the penalty of Deprivation ; and upon a legal tryal, and due process, made thereupon against him.

THIS I take to be the Law of our Church, and the undoubted Right of the Parochial Clergy ; and that all Oaths, Bonds, Promises, Contracts, and Obligations whatsoever, made by Any One in Prejudice of this Right, are not only highly injurious both to

(b) Reformat. Legg. Eccles. De Renuntiatione Beneficiorum : Cap. 3.

(c) Stat. 31. Eliz. Cap. vi.

their *Own Tenure*, and to the *Bishop's Jurisdiction*; but utterly *Inconsistent* with that *Oath* which every *Clergy-man* takes at the time of his *Institution* both against all such kind of *Contracts*, and to defend the *Rights* and *Privileges* of the *Bishop*, by whom He is *Instituted*. Nor do I know of any thing in all this, that is in any wise *Repugnant* either to the *Word of God*, the *Laws* and *Customs* of the *Realm*, or the *Queen's Supremacy*; the only *Circumstances* which, by the 25 *Hen. VIII. c. 19.* are required to continue it in *full force*, and *vigour*. All that can, I think, create any doubt in this matter, are two *Judgments* which are *Reported* to have pass'd in our *temporal Courts* contrary to One part of this *Conclusion*, in favour of *Bonds of Resignation*; upon which I must, therefore, beg leave to make a few *necessary Observations*. (d)

AND, 1st, Had They who either pass'd, or agreed to, those *Sentences*, gone no farther than their *Own Law*; Had they either declared, that such *Bonds* were not *contrary* to the *Statute* of the 31st of *Eliz.* Or that they were not *Simoniacal* at *Common Law*; or that however, as their *Reporter* has it, it was no matter *tho' they were*, their *Obligation* would be *nevertheless good in Law*; tho' we might have been desirous to have known their *Reasons* for such their *Opinions*, yet we should have had a due *Regard* to their *Character*; and have supposed that they had doubtless their *Reasons* for such a *Judgment*, tho' We, who are not so well acquainted with these matters, cannot discover what they were. But when they not only agree as to the *Validity* of such *Bonds*, but roundly tell us, that they are *not Simoniacal*, nor *have so much as any Colour of Simony*; We cannot but think our selves at *Liberty*, or rather under some kind of *Obligation*, to reason with them concerning a matter, wherein we conceive the *Rights* of the *Church* to be so highly concern'd: And that

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(d) That what I discourse with Relation to these two Cases may be the better understood, it will be necessary to set down the Reporter's Account of them. *Croke. Jacob. Fol. 248, 249. Jones vers. Lawrence.* "Debt upon an obligation of 1000 Marks, from Jones to Lawrence, if the said Obliger, within three Months after Request, upon his Presentation, Admission, Institution, and Induction to it, should Resign his Benefice absolutely, that then the Obligation should be void. Moved in arrest of Judgment, that it appears, by the Condition of the Bond, to be a Simoniacal Contract, and against Law, and therefore the Obligation void. *Sed non allocatur*: For there doth not any Simony appear upon the Condition, and such a Condition is good enough, and lawful. A Writ of Error upon this Judgment, was brought in the Exchequer Chamber, and the Principal Error insisted upon was, That this Condition is against Law: For it appears upon the Condition that it was for Simony, which makes the Obligation void. But all the Judges of the Common Bench, and Barons of the Exchequer, held that the Obligation, and Condition, are Good enough: For a Man may bind Himself to Resign, and it is not Unlawful, but may be upon good and Valuable Reasons, without any

the more, because an (e) Eminent Man of their Own Profession has told us; " That in the *Statute 31 Eliz.* there is no Word of *Simony*, because by that means the *Common Law* would have been " *Judge, What should have been Simony, and What not?* Which therefore I conceive He now thought it was not: Sure I am my (f) Lord

" *Colour of Simony.* And again, the next Year, fol. 274. *It was moved that the Bond was made for Simony, it being to Compel him to Resign. Sed non allocatur: For it is not Simony, but Good Policy, to tie him to Resign: And if it were, it is not Material, wherefore the Judgment was affirm'd.*

The Other Case is in *Croke's Carol.* fol. 180. *Babington versus Wood.* " Debt upon upon an Obligation conditioned; Whereas the Plaintiff intended to present the Defendant to such a Benefice, that if the Defendant at any time after his Admission, Institution, and Induction, at the Plaintiff's Request, Resigned the said Benefice into the hands of the Bishop of London, that then, &c. The Council for the Defendant shew'd, that the Cause of the Demurrer was, For that the Condition of the Bond, being to Resign upon the Request of the Patron, it is *Simony*, and against Law; so the Bond void. But all the Court conceived, That if the Plaintiff had averred, That the Obligation was made to bind him to pay such a Sum, or to make a Lease, or other Act, which appears in its self to be *Simony*, then upon such a Plea *PERADVENTURE* it might have appear'd to the Court to be *Simony*. --- But as it is pleaded by the Condition, it doth not appear that there is any *Simony*: For such a Bond to Cause him to Resign, may be Good, and upon good Reason and Discretion required by the Patron. Compare *Jones*, fol. 220. *Hutton*, fol. III. The Sum of all is, That such Bonds shall not be accounted *Simoniackal*, unless some Condition be expressly put into them, which They shall please to account *Simoniackal*; tho' the Condition being General, they may be made use of, and probably were design'd for such a purpose. Or, as Sir *Simon Degge* more tenderly expounds it; That Bonds taken upon Prudent, and Just Ends, to Resign, are not *Simoniackal*: But where such Bonds are taken upon Corrupt Designs, and it may be made appear by any subsequent Practice, or Action, it is clearly *Simony*, as if the Bond had been expressly to pay Money.—And (continues He) the World shall never persuade me, that those Reverend Judges, that gave those Judgments, ever intended farther. *Parson's Counsellor*, Part 1. Chap. 5.

(e) *Noye's Reports*, fol. 25. *Winchcomb against Puleston*.

(f) *Cawdrie's Case*, vth Report, fol. 8, 9. Where taking notice of the King's Jurisdiction in all Causes Ecclesiastical or Temporal: He thus reasons, with great Judgment, upon that Occasion.— " And as in Temporal Causes, the King, by the Mouth of the Judges, in his Courts of Justice, doth judge and determine the same by the temporal Laws of England; so in Causes Ecclesiastical and Spiritual; as namely, Blasphemy, Apostacy from Christianity, Heresies, Schisms, Ordering Admissions, Institutions of Clerks, Celebration of Divine Service.—SIMONY, &c. (the Connusance whereof, BELONG NOT to the Common Laws of England) the same are to be determined and decided by Ecclesiastical Judges, according to the King's Ecclesiastical Laws of this Realm.—For, as it before appeareth, the deciding of matters so many, and of so great Importance, are NOT within the Connusance of the Common Laws. And that we may see He did not affirm this without due Consideration, He returns again to it, at the End of his Discourse, fol. 40. " Observe, good Reader, seeing that the determination of Heresies, &c. SIMONY, &c. do NOT BELONG to the Common Law, How necessary it was for administration of Justice, that his Majesty's Progenitors, Kings of this Realm, did, by publick Authority, Authorize Ecclesiastical Courts under them, to determine those Great, and Important Causes Ecclesiastical (Exempted from the Jurisdiction of the Common Law) by the King's Laws Ecclesiastical.—And in the Case of *Baker*, who was sued in the Spiritual Court for *Simony*, 42 Eliz. Comm. Banc. and pray'd for a Prohibition;

Lord Coke, after the making of that *Statute*, declar'd it *not to be*. And therefore,

2dly, AND to come more closely to the Point: Of those who maintain the Validity of those Judgments, I would beg leave to Ask, Whether *Simony* be properly an Offence against the *Municipal Law of England*, and so to be determined either by the *Common*, or *Statute Laws*, of the *Realm*? Or, Whether it be not an Offence against the *Law Ecclesiastical*; and so to be determined according to the *known Rules*, and *Canons*, of the *Church*?

IF the *Former* shall be affirmed; I would then crave leave to Ask once more: Whether *Simony* be a *Crime* as *Variable* as the *Municipal Laws* and *Customs* of particular *States* and *Kingdoms*; much more as the present *Opinions* of a *Few Men* shall think fit to make it? Or, Whether there be not some *general Measure* whereby to judge of it; and so to render it in *All Christian States*, and *Churches*, Alike?

IF here again the *Former* shall be asserted; If in this *Great*, and, as They are pleased to call it, *Odious Crime* of *Simony*, there be nothing *Certain*; not so much as any *Common Rule*, or *Measure*, whereby to Judge of it; But Every Thing, or Any Thing, or Nothing is *Simony*; that particular *Laws* or *Persons*, shall please to declare, to be, or not to be, so; and no longer than They think fit to have it; We have then no more to do, but to Beg the Favour to know, What, at present, is *Simony* here in *England*? And what the *Laws* are by which we are to Judge of it? Whether nothing is *Simony* now, but what is contrary to the *express words* of the *Statute* of the 31st of *Elizabeth*? And in what part of that *Statute* we may find any such *Restrictive Clause*? What was *Simony* before the *Making* of that *Statute*? And, whatever it was, by what *Law* it was so? Whether no *Contract* can be *Simoniackal* that may be made Use of to Good, and Valuable, purposes; tho' it may, as well, be made Use of to very bad Ones; and 'tis great Odds, was designed to be so Used? For where Men have *Honest Intentions*, they are seldom ashamed to own them: And, for their Credit sake, if They design nothing amiss, They would go nigh to specify, at least, what they aim at in requiring such kind of *Bonds*,

BUT I can hardly think that any One will be so unreasonable as to pretend that *Simony* is an Offence against our *Own particular Constitution*; and the nature of it to be determined so in-

Prohibition; it was held, that it appertains to the *Spiritual Court* to determine what is *Simony*, and NOT TO THIS COURT to meddle therewith. And when the *Spiritual Court* hath so sentenced it, This Court ought to give *Credence* thereto, and ought not to dispute whether it be *Error*, or not. Croke, fol. 789.

tirely by our *Own Municipal Laws*, that nothing shall be accounted a *Simoniackal Contract* by the Church, but what is declared so to be, by the *Common Laws* and *Statutes* of the *Realm*. And therefore,

3dly, SINCE *Simony* is a *Crime* of an *Ecclesiastical* nature, which has from time to time been not only *forbidden*, but *declared*, by the *Canons* of the *Christian Church*: Since those *Canons* and *Declarations*, have been *generally Received* ever since they were *first made*, (and some of them are as *Old* as the *Apostolical Canons*, before any *General Councils* were held in the Church) by all *Christian Churches*; and particularly have been all along both *Received* and *Confirm'd* by our *Own*: I would be glad to know, Whether Those who have determined, that *Bonds* of *Resignation*, if there be either none at all, or no *Simoniackal Covenant*, expressly Contained in them, are not of *Themselves Simoniackal*, nor have so much as a *Colour of Simony*; did determine this either by the *Canons* and *Constitutions* of the Church *Catholick*; Or by the *Sentence* of our *Own Provincial Constitutions*; Or what the *Rule* was by which they governed their *Judgment* in this Particular?

THAT they could not have founded it upon the *Canons* and *Constitutions* either of the Church *Catholick*, or Our *Own Church* of *England*, I may venture, with some kind of *Assurance*, to *Affirm*. I have examined Both These with *tollerable Care*; and I am very sure, that the *Principles* of the former, and the express *Determinations* of the Latter, have pronounced the *quite contrary*, viz. (g) That *Bonds* of *Resignation* ARE *Simoniackal*; and for that reason did heretofore require every *Clergy-man*, at his *Institution*, expressly to *Swear* (what in Effect He still does) that *He had not Given any such Bond*; nor entred into any *Oath*, or *Promise*, to that Effect.

BUT what *Rule* then did they Go by? If by that of our *Own Law*, this brings the matter back to the *first Absurdity*; that *nothing is to be judged Simony by the Church, but what the very late Laws, or rather Law of the Realm* (for I know but of One that has any Relation to this matter) *have prohibited*. Which would be, in effect, to say, that there was no such *Crime* as *Simony* before; nor would now have been, had not the *Statute* of *Q. Elizabeth* chanced to have been made. If, to avoid this, it shall be said, that They went by *No Rule at all*; (besides that this ought not to be supposed of such Persons,) We should then be never the better for their *Determination*, as to any *Knowledge* of the true *Nature* of this *Crime*. All we should know would be, That Those *Judges*, who gave that *Sentence*, were of Opinion that *Bonds* of *Resignation* were not *Simoniackal*: It was *their Judgment*; But whether that *Judgment* were

(g) See before, Note (l) p. 35.

right, or wrong; whether it was founded upon any good grounds of Law, or not, it do's not appear.

HOWEVER, 4^{thly}, Since the *Constitutions* upon which our Notions of *Simoniactal Contracts* are built, and the *Oaths* appointed to be taken against them, have been *Establish'd*, were for the most part made before the 25th of K. Henry the viiith; Since according to that *Statute* all such *Constitutions* are declared to continue in force (at least as far as the *Church*, and *Clergy*, are concerned) as are neither contrary to the *Prerogative of the Crown*, nor our *Own Laws*, or *Customs*, (as I believe those we are now speaking of will hardly be *pretended*, I am persuaded will never be *proved* to be;) Since, lastly, *Simony* is sufficiently intimated in the Act of 5 *Eliz. c. 23.* to be a matter of *Ecclesiastical Cognizance*; and by the *Statute 31 Eliz. c. 6.* the *Church* is still left to judge of *Simoniactal Contracts*, as if that *Statute had never been made*; and the *Church*, in judging of Them, must proceed by its *Own Law*; I do humbly conceive, that what both the *Canons* of the *Church Catholick*, and our *Own Provincial Constitutions*, have declared to be *Simony*, that the *Ecclesiastical Courts*, and *Judges*, must *determine so to be*: And therefore, Whatsoever becomes of the *Penalties* of the *Statute*, which I am not at present concern'd with; either the *Ecclesiastical Judge* has now no longer any *Cognisance* of *Simony* at all, nor may proceed by *Ecclesiastical Censures* against Those who are guilty of it; (contrary to the ancient, and I suppose still allow'd *Rights* of the *Church* in this Case;) Or, (whatsoever *Simony* in other places may be) yet in those *Courts*, and by those *Judges*, it must be resolved to be the same it always was; and what the *Canons* of the *Church* have declared it to be.

IF therefore, the same *Contracts*, *Payments*, or *Promises*, be not *Simoniactal* in one sort of *Courts*, and by One kind of *Laws*, which are *Simoniactal* in, and by, Another; let this be Understood, and we desire no more. Only, it may be no improper matter for our *Common Governours* to consider; how odly it will look for that not only to be allow'd of, as *Good Law*, but to be declared from the very *Bench*, to be *Good Policy* too, in the *Civil Court*, which is an *Odious*, as well as *dangerous Offence* in the *Spiritual*; and as such to be punish'd with the highest *Ecclesiastical Censures*, *Excommunication*, and *Deprivation*.

BUT be this as it will; till those *Constitutions* I have before mentioned of the *Church Catholick*, approved and confirmed by our *Own Princes*, and *Synods*, be declared to be null, and void; Thus much I conceive will follow,

5^{thly}, and Lastly; THAT how innocently, or (as some think) wisely soever, a *Patron* may, out of *Good Policy*, require such *Bonds* as these; yet a *Clergy-man* cannot without *Perjury* give them. For the *Oath* which He takes against *Simony*, was certainly both drawn up, and

and imposed, by the Churches Authority : It was framed agreeably to the Constitutions of the same Church; and must therefore be Interpreted according to the Tenour of those Constitutions, and not by the Opinions of such Persons, as neither made, nor prescribed, that Oath; give me leave freely to add, nor have any Right to Interpret it; much less to put a Sense upon it, contrary to the known Sense of those who framed it.

WHAT a *Simoniactal Payment, Contract, or Promise*, by the Law Ecclesiastical is, I have before shewn. Every Payment beyond the usual, and accustomed fees, for the Presentation, where any such are due; or for the Institution, or Induction, of any Person into a Benefice, where there are no Others : Every Contract, or Promise, to make any such extraordinary Payment; or any Other not usually, and of right to be made; (as of Pensions, Procurations, Synodals, First-Fruits, Tenths, and the like :) Every other Contract, or Promise, to do any thing (tho' in its self never so Innocent, or even Commendable) which has not usually, or antiently, been done; nor would the Person who makes such a Promise, or Contract, have otherwise, in respect of his Office, and by the Orders of the Church, been Obligated to do; and particularly, according to our own Provincial Constitutions, Bonds of Resignation; are All of them *Simoniactal Payments, Contracts, and Promises*: And He who takes the Oath of Simony, composed on purpose for the discovery of such forbidden Contracts; when He swears, that He has made no *Simoniactal Payment, Contract, or Promise*, for the Obtaining, or procuring of his Benefice, nor will perform, or satisfy, any such Promise, or Contract, made by any Other, without his Knowledge or Consent; must be understood to Swear in this Sense; and to purge himself thereby from all Suspicion of any of these prohibited Payments, and Obligations. And if at the same time that He takes this Oath, He is conscious to himself that He has made any such, He not only for-swears himself; but, by the Laws of the Church, incurs a double cause of Deprivation, both for his Perjury, and for his Simony, if it be proved against him.

It might perhaps have been worth the while to have Enquired, how far, after all, the very Words of the 31st. Eliz. c. 6. are to be reconciled with the Lawfulness of those Bonds I before mentioned. For however Mens Authority may make their Judgments conclusive in Law; and we ought not only to submit to the Sentences of Those who have the Administration of Justice committed to them, but in Charity to believe that they proceeded uprightly, according to the best of their Judgment, in the passing of Them; yet no Human Character, how great or venerable soever, can oblige us to think those that bear it Infallible; Or hinder us from differing in our Opinion from them, if we are clearly persuaded that they were Mistaken. But this would probably be thought too bold an Undertaking in

in One of my *Profession*; and it has been already done so fully by a much better hand, that I shall rather refer Those (*b*) who have any Curiosity that way to his *Remarks*, upon this Occasion; than attempt to add any thing to them.

THE Conclusion of all is this: If the *Canons* and *Constitutions* of our Church, confirmed by the 25th Hen. VIII. and never, that I know of, Repealed by any Other Statute; may be allow'd to Declare, What is *Simony*: But much more, if it be confess'd that those *Canons* alone have a Right to declare it; I have then shewn what They determine, and what, I take, every *Clergy-man* to be obliged, by vertue of those *Constitutions*, to acknowledge so to be. But if these must not be any longer regarded, in this matter; I should be glad that we might, at least, have some other Certain Rule establish'd in their Place, to settle our Consciences upon a sure Foundation: That we may no longer Go on to Give, and Take Oaths, which we none of us Understand; and I am afraid, if the Good Old Rules be laid aside, we never shall.

I have now done with the several Points I propos'd to speak to: I shall detain you only while I make two or three Observations upon what has been said; which I take to be, upon many accounts, of the utmost Consequence for every Clergy-man seriously to Consider.

(1st.) That the Crime of *Simony* is of a larger Extent by the *Canons* of the Church, than it is commonly supposed to be by the *Laws* of the Realm: That the Statute of Q. Elizabeth, made against Corrupt Agreements for Ecclesiastical Benefices, does neither in the Express Words, nor the Construction of it, take in All that is declared by the Judgment of the Church Catholick, and our Own Provincial Constitutions, so to be. That it must therefore be a very Great, tho' I fear it is too Common a Mistake, for any Clergy-man to think, that nothing is to be accounted *Simony* by the Church, but what our Common Lawyers in their Books, and Reports, declare to have been so adjudged in their Courts: Who being no farther concern'd in the Determination of this Offence, than as it falls within the compass of the Statute before-mentioned; must be understood to mean no more, but that what they are pleased to Call *Simony*, is a Corrupt bargain, or not, by Vertue of that Statute.

BUT, (2^{dly}.) From what has been said, it will follow farther; That the Statute of the 31st of Eliz. having expressly Reserved to the Church the same Power it before had to proceed in Causes of *Simony*, and to judge of Them; a Clergy-man may be Articled against in the Spiritual Court, and be Deprived too of his Benefice, as a *Simoniac*; for such Contracts, or Promises, as perhaps would not have

(b) Bishop Stillingfleet's Discourse Of Bonds of Resignation, p. 18, &c. And p. 77, &c.

been sufficient to have done it in *The Temporal*. And either it must be said, that notwithstanding the *Salvo* of that *Statute* in this Case, the *Ecclesiastical Judge* has no longer any Cognizance at all of this Matter, (which I am Confident our Learned Men of the Law, will not say :) Or if He has, then He must be allow'd both in his Enquiry into, and Sentence concerning it, to proceed according to what the *Constitutions of the Church* have determined in that Case: For these are *His Law*; nor has He any *Other Rule* to Go by.

IN short, (3dly,) and Lastly: Since the *Oath* against *Simony* is, as I have shewn, imposed by *Ecclesiastical Authority*; and continues to be Required of every *Clergy-man* Now, as it has been for almost six hundred Years past, by the *Canons* of our *Church*: Since this *Oath* has from the beginning been drawn up pursuant to the *Definitions* of the *Church Catholic*, and to what our Own *Provincial Constitutions* have determined as to this Matter; It will follow, that whosoever takes this *Oath*, must be understood to do it in the *Sense* of those who both drew the *Form*, and enjoin'd the Taking of it, and still continue to Administer it. And therefore, He who Swears that He has made no *Simoniackal Payment*, *Contract*, or *Promise*, with Relation to the *Benefice* to which He is to be admitted, tho' He should have done nothing Contrary to the true meaning, and intention of the *Statute* of the 31st. of *Eliz.* will yet be found to have Forsworn Himself, if He has done any thing Contrary to the *Constitutions* of the *Church*: And which tho' no *Temporal Law* should have forbidden, yet the *Law Ecclesiastical* has declared to be a *Simoniackal Payment*, *Contract*, or *Promise*.

LET not then any politick Trader in these Matters think Himself secure, because He has taken such good Advice with his *Council*; or has otherwise managed his *Corrupt Agreement* so Closely, and Warily, that the *Civil Magistrate* cannot take hold of Him. But let him Consider rather, that if He shall have transgress'd the *Constitutions* of the *Church* in this particular, and yet shall presume to take the *Oath* of *Simony* (which is in effect to Swear, that He has not done any thing contrary to her *Constitutions*;) He will thereby involve himself in the Guilt of a Solemn, Wilful, and Damnable Perjury: A Sin, which if He has either any Sense of his Duty, or Concern for his Immortal Soul, must needs be a continual Horror, and Torment to Him, while He lives; and, if not Repented of, (as Repented of it cannot be, without acknowledging his Guilt; Giving up his *Benefice*; and making that publick Satisfaction He ought to the *Church*, for so scandalous an Offence;) will consign him over, to the dreadful Judgment of God, and the Loss of his Soul, to all Eternity.

FINIS.

